# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 152

THE NEW ORLEANS LAND COMPANY, APPELLANT,

vs.

LEADER REALTY COMPANY, LTD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 31, 1923.

(27,227)

# (27,227)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1919.**

# No. 472.

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THE NEW ORLEANS LAND COMPANY, APPELLANT,

*vs.*

LEADER REALTY COMPANY, LTD.

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.**

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INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1919.

1 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 12008.

(Late Circuit Court.)

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

NEW ORLEANS LAND COMPANY, Plaintiff in Error,

vs.

LEADER REALTY COMPANY, LTD., Defendant in Error.

Messrs. Charles Louque and W. O. Hart, for New Orleans Land Company, Plaintiff in Error;
Messrs. Lemle and Lemle, for Leader Realty Company, Ltd., Defendant in Error.

Writ of Error to the United States District Court for the Eastern District of Louisiana, New Orleans Division, from the Supreme Court of the United States, Returnable Thirty (30) Days from the 7th Day of July, 1919, at the City of Washington, District of Columbia.

2 *Bill of Complaint of New Orleans Land Co.*

Filed April 21st, 1919.

United States District Court for the Eastern District of Louisiana.

No. 12008 C. C.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

To the Honorable the District Court of the United States for the Eastern District of Louisiana.

The New Orleans Land Company, a corporation duly organized under the laws of Louisiana, and a citizen of said State; brings this its bill of complaint against the Leader Realty Company, Ltd.,

a corporation organized under the laws of Louisiana and a citizen of said State, and thereupon your orator complains and says:

1. That in the matter of James W. Peake, a citizen of the State of New York, vs. City of New Orleans, the late Circuit Court of the United States for the Eastern District of Louisiana, appointed a Receiver to liquidate the trust created by Act No. 30 of 1871, to sell the property held in trust by the City of New Orleans and pay the complainant in said case such sums as were due to him and liquidated by a judgment obtained by him in this Hon. Court;

2. That the bill for the foreclosure of said trust was filed on the 30th day of May, 1891;

3. That the Receiver was appointed and after qualifying as such, obtained an order for the sale of the property held in trust;

4. That the sale was made by said Receiver at public auction, on the 15th day of January, 1892, after thirty days of advertisement, in English and French newspapers, to Dr. C. A. Gaudet, he being the last and highest bidder;

5. That subsequently the said sale was duly confirmed by the Court and a regular notarial act before W. Morgan Gurley, was executed to said Dr. C. A. Gaudet by the Receiver, on the 20th of February, 1893, and the purchase money was deposited in the registry of the Circuit Court;

3 6. That Dr. C. A. Gaudet transferred the property so purchased to your complainant, the New Orleans Swamp Land Reclamation Company, whose name was subsequently changed by amendment to its charter to that of the New Orleans Land Co., the present complainant;

7. That your complainant having full faith in the decrees of this Hon. Court and as purchasers in good faith, went into possession of the property so purchased by them; and built shell roads, dug canals and made other improvements, converting what was an uninhabitable and valueless swamp, into an inhabitable and valuable property; that neither the large sums of money expended, nor the enhanced value of the property, nor even the purchase price were ever returned to your Complainant;

8. That the Circuit Court of the United States was the first and only Court to take jurisdiction of the real estate so sold to your Complainant; that the diverse citizenship of the parties, the matter at issue, the foreclosure of a trust, gave perfect and complete jurisdiction to said Court of the parties, the matters at issue and of the res;

9. That at the time that these proceedings took place, the Court was dealing with the State's first transferee, the City of New Orleans and there was no adverse interest of record; neither the Leader Realty Co., Ltd., nor Dr. Smythe, its transferor ever having pre-

vious to the purchase by your Complainant placed their title or claim on record.

10. That the order of sale directed the Receiver to transfer to the transfer-er of your complainant, Dr. C. A. Gaudet "Good and valid titles, free from all liens, mortgages or encumbrances, if any there are."

11. That your complainants are purchasers in good faith, under the orders of this Court and are entitled to the protection of the Court to maintain their title and possession. That the decree of sale was affirmed by the Circuit Court of Appeals for this Circuit, as may be seen by the report of the judgment in the 52 Fed. Rep. page 74: said decision overruling the opposition of the City of New Orltans to said sale;

4 12. That the decrees so rendered and the title so made cannot be assailed, by any other Court much less by the State Court, inasmuch as no appeal can now be taken from the said order of sale and more than ten years had elapsed before any attack had ever been made on the title executed by the Receiver of this Hon. Court.

That said decree is binding, on the State and her transferees, having been rendered against her first and original transferee, the City of New Orleans,

13. That the Leader Realty Co, Ltd., instituted a suit and recovered from your Complainant a part of the property sold by the Receiver to your Complainants; said suit being Nos. 91,799 and 91,000 of the docket of the Civil District Court for the Parish of Orleans; which suit was filed Dec. 8, 1909; said suit was based on land patents issued in 1874 to Dr. Smythe by the State; Dr. Smythe having transferred his interest to the Leader Realty Co. Ltd.;

14. Your complainants aver- that said Civil District Court had no jurisdiction nor legal right to disregard and treat as null the decree and sale thereunder made by the United States Court;

15. That the judgment and proceedings of the State Court was duly affirmed by the Supreme Court of Louisiana, notwithstanding the protest of your complainant and objection to the usurpation of *their* jurisdiction and the Leader Realty Co. Ltd., is about to issue a writ of possession under said decree and dispossess your complainant;

16. That your complainant being entitled to the protection of this Hon. Court in its purchase, is entitled under the jurisprudence established by the Supreme Court of the United States, to obtain a writ of injunction to prevent the Clerk of the Civil District Court, the Sheriff, the Leader Realty Co. Ltd., and their Attorneys from executing or attempting to execute the judgment of said Civil District Court, for the Parish of Orleans, Nos. 91,799 and 91,800 of its docket;

That the property involved consists of Lots 1, 6, 7 and 12 of Section 17 in Township 12 S. R. 11 E. in S. E. District, east of the River; of the value exceeding three thousand dollars;

5 17. That the State of Louisiana under Act No. 30 of 1871, ordered the drainage work to be done, created the trust for the payment of the work, appointed the City of New Orleans trustee of all the aforesaid described property, and the State could not afterwards destroy the trust and transfer the property by the issuance of a land patent to Dr. Smythe; free from any lien for the work of dainage; that under said act 30 of 1871 drainage was performed to the amount of $2,242,514.78, as found by the Supreme Court of the United States in 139 U. S. 348, most of which still remains unpaid;

That the Act No. 30 of 1871, did not only create the trust and appointed the City of New Orleans trustee, but transferred the eventual interest in said land to the City of New Orleans in fee simple, in case said land should not be necessary to pay for the drainage work; that after having thus disposed of her interest, the State could not make a sale of the property to another party;

18. That the foreclosure of the trust and order of sale by the Circuti Court were proceedings in rem which forever concluded all questions as to the validity of the trust and the right of the State to create the same; and the State having parted with her interest in 1871, could not thereafter in 1874 transfer the same property to another;

19. That your complainant now applies to the ancillary jurisdiction of this Court for protection and relief;

Wherefore, Complainant prays that a writ of injunction issue herein prohibiting the Leader Realty Com. Ltd., the Clerk and Sheriff of the Civil District Court from carrying out the judgment of the Civil District Court, Nos. 91,799 and 91,800 of the Docket of said Court into execution and attempting to dispossess your complainant from the land purchased by Dr. C. A. Gaudet, from the Receiver of this Court by act before W. Morgan Gurley, Notary Public, on February 20, 1893, or show cause to the contrary, on such day as this honorable Court may fix, why the writ of injunction should not be made perpetual; your complainant prays for a writ of subpœna to issue herein on the Leader Realty Co. Ltd., through its proper officer and after due proceedings that your Com-
6 plainant be recognized as the true owner of the property acquired by *them* at the sale made by the Receiver in these proceedings, the judgment of the Civil District Court and Supreme Court of Louisiana to the contrary, notwithstanding, and Complainant prays further that the injunction herein be made perpetual and for costs and for such relief as the equity and the nature of the case may require.

(Signed) CHAS. LOUQUE,
W. O. HART,
*Solicitors.*

A. C. Wuerpel, being duly sworn, says: That he is the president of the New Orleans Land Co., formerly known as the New Orleans Swamp Land Reclamation Co. and that all the facts and allegations of the foregoing petition are true and correct.

(Signed) A. C. WUERPEL.

Sworn to and subscribed before me on this 21 day of April 1919.

[SEAL.] (Signed) H. J. CARTER,
*Clerk U. S. District Court.*

Let defendant show cause on Monday, April 28, '19, at 10:30 A. M. why a preliminary injunction should not issue herein.

(Signed) RUFUS E. FOSTER,
*Judge.*

April 21, '19.

7 *Subpœna in Chancery and Marshal's Return.*

Issued April 21st, 1919.

UNITED STATES OF AMERICA:

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon the Leader Realty Co. Ltd., through its proper officer, to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, in twenty days from date of issuance hereof, then and there to answer a Bill of Complaint, filed against it by the New Orleans Land Co., (a copy of which bill of complaint and the order thereon accompany this subpœna in chancery) wherein The New Orleans Land Co., is Complainant, and the Leader Realty Co., Ltd., is defendant, in the cause wherein James Wallace Peake, is Complainant and City of New Orleans, is Defendant.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 21st day of April, in the year of our Lord one thousand nine hundred and 19 and 143d year of American Independence.

[SEAL.] (Signed) H. J. CARTER,
*Clerk,*
By —— ——,
*Deputy Clerk.*

The defendant Leader Realty Co. Ltd., is hereby notified that it is required to file its answer or other defense in the Clerk's Office of the United States District Court on or before the twentieth day

after service hereof, excluding the day thereof, otherwise the bill of The New Orleans Land Co., may be taken pro confesso.

(Signed) H. J. CARTER,
*Clerk.*

By —— ——,
*Deputy Clerk.*

*Marshal's Return on Subpœna.*

Filed May 7th, 1919.

Received by U. S. Marshal, New Orleans, La., April 22nd, 1919. And on the same day month and year I served a certified copy hereof together with a certified copy of the original bill of complaint of the New Orleans Land Co., on the Leader Realty Co. Ltd., through Johnston Armstrong, Attorney for said company by handing same to him in person at New Orleans, La., he stating that he would accept service for said company.

FRANK M. MILLER,
*U. S. Marshal,*

(Signed) By W. L. BROWN,
*Deputy.*

[Endorsed:] No. 12,008 C. C. United States District Court, Eastern District of Louisiana, New Orleans Division. James Wallace Peake vs. City of New Orleans. Subpœna in Chancery on Bill of N. O. Land Co. vs. The Leader Realty Co. Ltd. Marshal's return.

8 *Hearing and Submission of Application for a Preliminary Injunction.*

Extract from the Equity Journal.

February Term, 1919.

NEW ORLEANS, Wednesday, April 30th, 1919.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

(Late Circuit Court.)

No. 12008.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

This cause came on this day to be heard upon the application of the New Orleans Land Company, complainant in the bill of com-

plaint filed in this cause on April 21st, 1919, for a preliminary injunction.

Present: Chas. Louque, solicitor for mover.

" Gustave Lemle, Johnston Armstrong and William W. Wall, solicitors for defendants.

Whereupon, after hearing the pleadings and evidence offered and arguments of counsel for the respective parties, the matter was submitted, when the Court took time to consider.

9 *Note of Evidence on Behalf of New Orleans Land Company.*

Filed April 30th, 1919.

District Court of the United States for the Eastern Dist. of La.

No. 12008.

PEAKE

vs.

CITY OF NEW ORLEANS & als.

Note of Evidence on Petition for Injunction, on Behalf of the N. O. Land Co., Heretofore Known as New Orleans Swamp Land Reclamation Co.

Complainant the N. O. Land Co offers in evidence:

1. Petition, answer and judgment in J. W. Peake vs. City of New Orleans, No. 10810 of the Circuit Court of the U. S. for the Eastern Dt. of La. and the decision of the Supreme Court of the U. S., reported in 139 U. S. 249 to 251.

2. The petition, answer and judgment appointing the Receover in James W. Peake vs. City of New Orleans, No. 12008 of the late Circuit Court of the U. S. for the Eastern Dt. of Louisiana.

The petition of the Receiver for an Inventory and order; the Inventory.

The order directing the City to transfer to the receiver all the rights of the City as trustee of the drainage fund; the petition of the receiver to sell the property inventoried and involved in this litigation; th ler of the Court thereon; the report of the Receiver of the sales made by him; the order of the Judge that same be filed and noted of record and further of no opposition to the confirmation of said sale be made within eight days from the date of filing, that the same be and stand confirmed and that the Receiver proceed to give title to the purchasers; the map exhibited by Receiver at sale; opposition of the City of New Orleans to the Receiver's sale.

10 The transfer by the City of New Orleans to the Receiver. Judgment confirming the sale.

Appeal of the City of New Orleans to the Circuit Court of Appeals Fifth Circuit.

Judgment rendered by the Circuit Court of Appeals Fifth Circuit No. 46 of its docket—reported in 52 Fed. Rep. 74.

Printed record in Leader Realty Co. vs. N. O. Land Co. Nos. 18251-19456-20818.

Petition, answer and judgment of the lower Court and Supreme Court.

11 *Petition of James Wallace Peake.*

Filed December 18, 1884.

To the Honorable the Circuit Court of the United States for the 5th Circuit and Eastern District of Louisiana:

The petition of James Wallace Peake who resides in New York in the State of New York, with respect represents:

That petitioner is a citizen of the State of New York, That the City of New Orleans, a municipal Corporation of the State of Louisiana, a citizen of the said State, is justly and truly indebted to petitioner in the full sum of Six thousand dollars, with interest at the rate of eight percentum per annum, from the 9th of July, 1875, until paid, for this to-wit; that petitioner is the holder and owner of three certain warrants made part hereof, made and issued by the said City of New Orleans, dated the 9th July, 1875, which are each in the figures and form as contained in the exhibit marked A annexed to and made part hereof, except as to number, the same being numbered 115, 116 and 122 respectively.

Petitioner avers that said warrants were legally and formally issued by J. G. Brown, the then Administrator of Public Accounts of the said City of New Orleans, for the amounts of money therein set forth, and were on the same day presented to Edward Pilsbury the then Administrator of Finance New Orleans. And the said presentation was acknowledged by him in writing, and the same were and are legal contract obligations of the said City of New Orleans, to pay the amounts thereof, and the interest therein stipulated, and the same are now due and owing. And the said W. Van Orden, to whom the said warrants were made payable, endorsed the same, whereby the same became negotiable and transferable by delivery and as such petitioner acquired the same.

Petitioner further avers that the said W. Van Orden, the payee of the said warranty is a citizen of the State of New York, one of the States of America, and could sue and maintain an action on the said warrants in this Honorable Court, for the recovery of the amounts thereof.

*thereof.*

12 Petitioner further avers that by the Act, No. 30, 1871, refer-ed to in the said warrants it was enacted that the three Boards of Draining Commissioners for the draining districts of Orleans and Jefferson, established under the Acts of March 18, 1858, of March 17, 1859, and the several amendments thereof, and any

and all other person or persons or corporations, who might have them in possession, should transfer to the Board of Administrators of New Orleans, all moneys, assessments, and claims for drainage in their hands, or under their control, all titles to real estate, all books, plans, tableaus, Judgments in favor of commissioners, the office furniture of said drainage commissioners; a true statement of the claims of said drainage commissioners against the City of New Orleans, to be adjudicated and settled out of the money collected by the City of New Orleans, and pertaining to said drainage districts and that the said Board of Administrators of New Orleans should be and were thereby subrogated to all the rights, powers and facilities possessed and enjoyed by the commissioners of the said several draining districts or of any other corporation charged with the duty of drainage and leveeing within the limits of the city of New Orleans and Carrollton; that the said Board of Administrators, were directed to collect from the holders of property within the said draining districts, the balance due on the assessments, as shown by the books of the first and second and third draining districts, under the acts of March 18, 1858, that of March 17, 1859, and the several supplementary and amendatory acts thereto, and which assessments, were thereby confirmed and made exigible. And further to make assessments of two mills per superficial foot, in those parts of the three drainage districts, as existing under and created by the acts of March 18, 1858, and of March 17, 1859, and amendments thereto, and on such other lands as should be brought within the protection levees contemplated by the said act No. 30 of 1871, where no assessments had been made, and to execute and enforce the same as provided for by the several acts of the legislature, creating and regu-
13 lating said Boards of Draining Commissioners. That all moneys received by the said Board of Administrators, from the said Commissioners of draining districts; from the collection of claims for drainage then due; from the collection of drainage assessments, and from any sources of revenue contemplated by the provisions of the section No. 9 of the said act should be placed to the credit of the Mississippi and Mexican Gulf Ship Canal Company, and held as a fund, to be applied only to the drainage of New Orleans and Carrollton, in accordance with the provisions of the said act; and that all money so received, should be held in trust for the payment of said Mississippi and Mexican Gulf Ship Canal Company. which said act No. 30 of 1871, is made part of this petition.

Petitioner avers that the said Board of Administrators of the City of New Orleans complied with the act No. 30 of 1871, and took possesison of all the money, rights, privileges, properties and powers conferred on them, and became possessed of the means necessary to carry out the objects of said act, and to provide for the payments of all warrants issued under the provisions of said act.

That subsequently, by act No. 16 of the General Assembly of Louisiana, approved, February 24, 1876, the City of New Orleans was authorized and empowered to assume control of and to transact and contract with the Mississippi and Mexican Gulf Ship Canal Company, and the transferee thereof, meaning thereby the said W.

Van Orden, for the purchase and settlement of all and any rights franchises and privileges, created authorized, or arising in favor of said company or said transferees, under and by virtue of the said act No. 30, of the acts of 1871, also for the purchase and transfer to the City of New Orleans, of all tools, implements, machines, boats and apparatus belonging to said company or its transferee and by it or him used for or pertaining to drainage work authorized to be done by said act, No. 30, of 1871. That if the said purchase and settlement should be made, all amounts to be paid should be paid in drainage warrants, by the City of New Orleans, to be issued in the same form and manner as those theretofore issued, to the transferee of said company, under said act No. 30 of 1871, for work done, and be made payable out of drainage assessments. That so soon as
14 the said sale and purchase should be completed, the City of New Orleans, through its officers should have exclusive control of all the rights, powers and franchises granted by act No. 30, of 1871, relative to drainage and other public works to the Mississippi and Mexican Gulf Ship Canal company or its transferee; and the said City of New Orleans should alone have the power, to do all canalling, dredging, ditching or drainage work required to be paid for by assessment upon property or from the City of New Orleans, which act is made part of this petition. That the City of New Orleans did contract, under the authority of said act and became the owner and possessor of all the rights of property and franchises of the said company and of its transferee, and was charged with all the responsibilities of the said Drainage Commissions, the Administrators of the City of New Orleans, and the City of New Orleans, and was to carry out the same and to pay all the obligations thereof.

That by Act No. 20 approved June 23, 1882, of the Legislature of the State of Louisiana, it was in section No. 42, thereof enacted, that all laws providing for the drainage of the City of New Orleans, or portions thereof, and a collection of the drainage tax assessment, were repealed.

That on the 5th April, 1881, the City council of New Orleans, passed an ordinance, requesting the Mayor to issue a proclamation, and on the 8th of April, 1881, the Mayor did issue his proclamation, advising all persons not to pay the drainage tax. Copy of said ord-nance and of said proclamation are annexed and made part hereof as Exhibit "B."

That the said City of New Orleans has taken possession of all the taxes, assessed and collected and of all the property rights, money, privileges and franchises of the various draining authorities and absorbed and applied them to other purposes than was intended or warranted by law, and now repudiates all the indebtedness responsibilities and liabilities of the same and attempts to shield herself under illegal and unconstitutional acts of the legislature.

Wherefore petitioner prays that the City of New Orleans through the Mayor thereof be cited to answer this petition, and that the
15 said City be condemned to pay to petitioner the sum of Six thousand dollars with interest at the rate of eight per centum

per annum, from the 9th of July, 1875, until paid, and for general relief.

(Signed) ROBERT MOTT,
*Att'y of Pet'r.*

16 *Answer of the City of New Orleans.*

Filed January 19th, 1885.

In the Circuit Court of the United States.

No. 10810.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

And for answer now comes the City of New Orleans defendant herein and denies all and singular the allegations in plaintiff's petition except so far as hereinafter admitted, and def't further says:

That, in the year 1858, the Legislature of Louisiana, by Act No. 165 of that year, entitled, "An Act to provide for the leveeing, draining and reclaiming of swamp lands in certain portions of the Parishes of Orleans and Jefferson," enacted that certain portions of said Parishes should constitute three drainage districts, designated, respectively, as the First, Second and Third Drainage Districts and that for each of said districts there should be a Board of Commissioners, which was constituted, for the purposes of the act, a body corporate; and, that, whenever either of said boards was prepared to drain its respective district, it should cause a plan thereof to be made, accurately designating the limits thereof, the subdivision of property therein contained and the names of the proprietors, and deposit said plan in the office of the Recorder of Mortgages and give notice thereof by publication, and, after due publication, apply, by petition, to the proper District Court, which Court upon due proof of publication, should decree that each portion of the property situated within said limits is subject to a first mortgage lien and privilege in favor of such Board of Commissioners, for such amount as might be assessed upon said property. That the said Board of Commissioners were empowered to levy uniform assessments upon each superficial square foot of land situated within the district; and that, on the non-payment of the amount of the assessment, judgment therefor should be recoverable before any Court of competent jurisdiction, and the land so assessed should be sold, according to law, to satisfy said judg-
17 ment; and the sum of $81,000, to be equally divided among said three draining districts, was appropriated out of the Swamp Land Fund, of the First Swamp Land District of the State, for the purpose of said act.

That in 1859 the Legislature of Louisiana passed an Act, No. 191

of that year, supplementary to said Act No. 165, of 1858, whereby the said Boards of Commissioners were authorized to issue bonds, having not more than thirty years to run, and bearing interest not exceeding eight per cent. per annum, to an amount not exceeding $350,000 for each drainage district; and, upon issuing such bonds, "to fix and determine the amount of assessment to be levied upon the superficial square foot" of land within the respective districts, and to apportion the amount to be paid yearly by the owners of said lands, in order to pay the annual interest on said bonds and the bonds at maturity; provided, that the amount of the assessment demandable yearly should not exceed one-tenth of such assessment.

That in the year 1861 the Legislature passed an Act No. 57, of that year, whereby it was enacted "That the amount of assessment which the Boards of Commissioners of the several Drainage Districts are authorized to fix and apportion, to be paid yearly by the owner or owners of the lands within said districts, in order to pay the annual interest on the bonds issued or to be issued by said Boards of Commissioners, by virtue of the second section of an act supplementary to an act to provide for leveeing, draining and reclaiming swamp lands in certain portions of the Parishes of Orleans and Jefferson, approved March 18th, 1858, shall be collected and sued for, the following mode of proceedings, to-wit: As soon as any assessment has been made, and notice thereof shall have been given, a copy thereof shall be filed in the Third District Court of the Parish of Orleans for the assessments made on the property within the limits of the Parish of Orleans, and in the Third Judicial District Court, sitting at Carrollton, for assessments made on property within the limits of the Parish of Jefferson, on which tableau of assessment thus to be filed the property assessed shall be set forth, together with the amounts assessed and the names of the owners thereof; * * * that a petition shall be filed with said assessment rolls, praying for an order that all persons whom it may concern do show cause within thirty days from the first publication of said order, why said assessment roll should not be approved and homologated, * * * and, after said publication, the said Courts shall, on motion of the counsel of said Boards of Commissioners, approve and homologate said assessment rolls, which shall be a judgment against the property assessed and the owners thereof, on which execution may issue as on judgments rendered in the ordinary mode of procedure, and the Court shall, at the same time, and in the same judgment, order the delinquent parties to pay ten per cent, in addition to the amount assessed to pay counsel fees and costs.

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Respondent says that it is true, that an additional drainage district, was established, and assessments upon the property therein made by ordinances of the Board of Administrators of the City of upon assumption of authority so to do, under and by virtue of Act No. 30, of 1871, but this Respondent says that the said ordinances and the said act of the Legislature, in so far as construed, to confer such authority, and the further authority, as claimed, to proceed for the enforcement of said drainage assessments, by the summary mode of

procedure described in Act No. 57, of 1861, have been subsequently, repeatedly, and uniformly held by the Courts, of the State to be void and inoperative; and Respondent further says, that, in the suit entitled Mississippi and Mexican Ship Canal Company vs. City of New Orleans, 35 An. p. 68, it was expressly held by the Supreme Court of the State that the City of New Orleans was not liable to any extent or for any sum whatever, for said assessments and judgment therefor, claimed to have been recovered therefor, in proceedings had under and in conformity to said Act No. 57, of 1861, and Act No. 30, of 1871; and this Respondent says that, by virtue and effect of said final judgment of the Supreme Court, the def't is barred and estopped from claiming any relief in this proceeding against this respondent by reasons of said assessments and judgments.

Respondent says it is true that by said Act No. 30, of 1871, the said Boards of Commissioners created by said prior acts were
19 superseded, and that the Mississippi and Mexican Gulf Ship Canal Company were empowered to carry on a system of drainage, and that the Board of Administrators of the City of New Orleans were subrogated and succeeded to the right and duties of said Board of Commissioners to the extent stated in said Act; and Respondent says that by said act it was provided that all work done by said Mississippi and Mexican Gulf Ship Canal Company should be paid for out of a drainage fund to be derived from said assessments, the payments to be made at the rates fixed by the act, either in cash, or, where there was no cash at the time to the credit of said fund, in warrants upon said fund, to be drawn by the Administrator of Accounts or the Administrator of Finance, and that said drainage fund was declared by said act to be a trust fund for the payment of said warrants.

Respondent admits that under said act the said company proceeded with said drainage work and received drainage warrants therefor, and that for payment of said warrants the said drainage fund and the said assessments and judgments were pledged; that under said acts of 1858, 1859 and 1861, plans were filed, proceedings had and judgments entered, but this Respondent says, all of said proceedings and judgments, in so far as they were had and obtained in conformity to said act No. 57, of 1861, have subsequently been held by the State Courts, repeatedly and whenever called in question or sought to be maintained or enforced, to be void and inoperative.

This Respondent admits that the several drainage assessments made by said Board of Commissioners and Board of Administrators of the City of New Orleans and the divers proceedings and judgments for the enforcement thereof, were made and had, but this Respondent says that subsequent thereto and in proceedings had at the suit as well of Warner van Orden and others as of Respondent for the maintenance and enforcement thereof in the State Courts of competent jurisdiction, said proceedings and judgments have been repeatedly and uniformly held to be void and inoperative.

Respondent says, that in 1876, the Legislature passed an act No. 16 of that year, entitled "An Act to authorize the City of New

Orleans to assume exclusive control of all drainage works
20 in the drainage district; to authorize the purchase of certain rights and property of the Mississippi and Mexican Gulf Ship Canal Company and its transferee, and to provide for the manner of making said purchase and for paying therefor in drainage warrants," by which act the Common Council of the City of New Orleans was authorized and empowered to contract with the said Company and the transferee thereof for such purchase, and by the third section of which act it was expressly and specially enacted and declared that all amounts to be paid as the price and consideration of said purchase "shall be paid in drainage warrants by the City of New Orleans, which said warrants shall be issued in the same form and manner as those heretofore issued to the transferee of said company under Act No. 30, of Acts of 1871, for work done"; and that such warrants "shall be made payable out of the drainage assessments;" and by the fourth section of said act, "that whenever the sale and purchase contemplated by this act shall be completed and the drainage warrants issued in payment of the price agreed on and fixed, the City of New Orleans, through its officers, shall have exclusive control of all the rights, powers and franchises granted by Act No. 30, of Acts of 1871, relative to drainage or other public works to the Mississippi and Mexican Gulf Ship Canal Company or its transferee; the City of New Orleans shall alone have the power, either through its own officers or employes or by contract to the lowest bidder, to do all canaling, dredging, ditching or drainage work required to be paid for by assessment upon property or from the City Treasury."

And this Respondent says that it is true, that in accordance with said Act No. 16, of 1876 the purchase contemplated and provided by said act was made by the City from the Company, and the transferee of said company, on the 7th of June, 1876, as per notarial act of purchase and settlement of that date, and that by said act it agreed and bound itself to pay three hundred and twenty thousand dollars in drainage warrants, and that said warrants were accordingly delivered to the assignee of said company.

21 Respondent says it is true that since said purchase the City has had possession and enjoyment of the property so purchased except as to a portion thereof, from which it has been evicted by creditors of the said Mississippi and Mexican Gulf Ship Canal Company, asserting rights thereupon paramount to the right acquired thereto by the City by said purchase from the said company and the transferee of said Company, Warner Van Norden; but Respondent says that it is not true, that the City has wholly disregarded its obligation to pay for said property, but that on the contrary the truth is that it made payments therefor in full in the manner stipulated for at the time of said purchase, as stated in the same paragraph of the bill, in drainage warrants then delivered to the transferee of said Company to the amount stated in the bill, *in* this form of payment was the sole and only form of payment for which the municipal corporation of the City of New Orleans was competent to obligate or bind itself under the express terms of said Act No. 16, of 1876.

This Respondent says, that the law under which said drainage warrants were executed and delivered as the price and consideration of said purchase, as well as the laws under which said drainage warrants were issued, for work done under the terms of said acts, contemplated and intended that the drainage assessments, to meet and pay said warrants, should be enforced and collected by said City, and that all amounts collected therefrom, should constitute a trust fund, to be held and applied to the payment and satisfaction of such warrants, the City not being entitled to apply any portion of such fund to any other purpose, except in the event of a surplus thereof remaining after the payment of all of said warrants; and Respondent says, that large sums have heretofore been collected by it from such assessments, and passed to the credit of said Drainage Trust Fund, and that all amounts so collected, have been applied to the payment of drainage work and drainage warrants, issued under the terms of said act; and as to the residue of said assessments remaining uncollected, that it has used all due diligence to collect the same by means of the judicial proceedings stated in the bill, and otherwise, without avail.

22 This Respondent says, that the said Acts under which said warrants were issued, never contemplated or intended that they should become payable in any event or contingency, otherwise than out of said Drainage Fund, and that said warrants were executed and accepted with full knowledge by all parties, that they were not and could not, in any event, become chargeable to the City of New Orleans, or payable by it, otherwise than out of said Drainage Fund; that the corporate authorities of said City were, and are, wholly without power or competency, to bind the municipality to pay, or to provide means to pay, or to provide means to pay said drainage warrants, otherwise than out of said Drainage Fund; and that it has at no time been competent to the corporate authorities of said City under said acts or under any law applicable to the claims evidenced by said warrant; by an act or failure to act on their part to incur any corporate liability in respect of said warrants other than to the extent above stated, or to change the character of the liability or obligation evidenced by said warrants, from a charge upon a particular and specific fund, to-wit: the Drainage Fund aforesaid, into a general liability or obligation of the municipality, to be met by general municipal taxation, or otherwise, than out of the particular fund to be derived from said Drainage assessments.

And Respondent says that the said drainage assessments were and are amply in amount, if collected, to meet and pay all of said drainage assessments outstanding; that without fault of this Respondent it has to a large extent been able to enforce and collect said assessments; Respondent admits that the holders of said drainage warrants are entitled to the benefit of said assessments, and of the proceedings and judgments stated in the bill, as far as they can be made effective and available as securities for the payment of said warrants.

Respondent denies that said drainage warrants, though it is ad-

mitted that they are drawn payable to order, are negotiable securities; and says that the laws heretofore set forth under which said warrants were executed, do not authorize or empower the execution or issuance by the City of New Orleans of securities negotiable in form; that the *that the* said warrants are not in the form of a bond or note of the City of New Orleans, binding the City absolutely for the payment of a certain sum of money at a certain time, but are merely orders drawn by one officer of the City, the administrator of Accounts, on another officer of the City, the Administrator of Finance, for the payment of the sums of money specified in such orders, out of a particular fund, to-wit: the Drainage Fund, and not otherwise; and this Respondent says that the holders or owners of such warrants, other than payees named in the warrants, are not entitled to claim the right to be dealt with as holders of negotiable securities, but can only claim as ordinary transferees or subrogees of the original holders.

Respondent says, it has heretofore discharged the obligations to the best of its ability, by making assessments and taking the judicial proceedings stated in the bill and other proceedings, but that these proceedings have, in the main, been rendered abortive and ineffective by rulings and judgments of State Courts of competent jurisdiction, for which it is in no wise responsible or accountable; and, further, this Respondent says again that, had there been any unlawful or improper action of failure to act by the City authorities, in the premises, which is not admitted, but denied, by no action or failure to act of the corporate authorities, in the manner charged in the bill, or otherwise, could any other corporate liability or obligation in respect of said warrants be incurred than that specified in the acts under and by virtue of which they were issued, or the municipality be rendered liable for the payment of said warrants out of any other fund than the said drainage fund created by said act, and that, at no time, has it been competent to the corporate authorities by any action or refusal or failure to act on their part, to change or enlarge the character of the indebtedness evidenced by said warrants from a charge on a particular fund, to-wit: the drainage fund, as aforesaid, to a general corporate indebtedness or liability chargeable against the corporate revenues generally, to be provided for by general corporate taxation, levied without reference to ownership of lands assessed for drainage under said acts authorizing the issuance of said warrants.

Wherefore your respondent prays to be hence dismissed with costs and for all gen'l and equitable relief.

(Signed) W. H. ROGERS,
*City Att'y.*

25 *Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, April Term, 1887.

NEW ORLEANS, Monday, May 9, 1887.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, District Judge.

No. 10810.

JAMES WALLACE PEAKE
vs.
THE CITY OF NEW ORLEANS.

By reason of the verdict of the jury herein and in accordance therewith;

It is ordered, adjudged and decreed that the plaintiff, James Wallace Peake, do have and recover of and from the defendant, the City of New Orleans, as provided by Act No. 30 of 1871 as successor of the Drainage Commissioners established under acts 165 of 1858 and 191 of 1859 and the various acts of the Legislature of Louisiana supplementary thereto and amendatory thereof the sum of six thousand dollars ($6,000.00) with 8% interest thereon from July 9, 1875, and costs of suit—both the sum recovered and costs of suit to be paid out of said Drainage Fund.

Judgment rendered May 9, 1887.
Judgment signed May 20, 1887.
(Signed) EDWARD C. BILLINGS,
*Judge.*

26 *Extract from United States Reports, Volume 139, Pages 343 to 348, Affirming Judgment of the Circuit Court of Appeals in the Matter of James Wallace Peake vs. City of New Orleans.*

PEAKE
v.
NEW ORLEANS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

* * * * * * *

"On March, 1858, the State of Louisiana passed an act to levee, drain and reclaim certain lands situate in the parishes of Orleans

and Jefferson, comprising the Cities of New Orleans, Jefferson and Carrollton, the whole area thereof being 26,026 acres. These lands were separated into three districts, entitled draining districts. To carry this act into effect a board of commissioners was appointed for each district. They were given full power to do the work, each in its district. Payment was provided for in this way: The commissioners were to prepare a plan of the district to be drained, showing the work to be done, the subdivision of the ground into lots, blocks, etc., with the names of the several owners thereof, and to deposit such plans in the office of the recorder of mortgages in the parish in which the land was situated. After publication the several District Courts within whose jurisdiction the lands to be drained were situated were directed to decree that each portion of the property situated within the limits mentioned in the notices is subject to a first mortgage lien and privilege in favor of such board of commissioners for such amount as might be assessed upon the property for its proportion of the cost of draining, with interest thereon at six per centum per annum from demand thereof. The decree was to be recorded in the office of the recorder of mortgages, and the lien and privilege mentioned therein were declared to "take precedence over all mortgages,
liens and privileges whatsoever, whether tacit, conventional,
27 legal or judicial, and shall attach to said property until the amount assessed and the interest thereon shall have been paid in full." The commissioners were thereafter to levy such uniform assessments upon the superficial or square foot within the drainage section as might be necessary for payment of the work. This statute also provided, that, on non-payment of the assessment, judgment might be recovered therefor in any court of competent jurisdiction, and the land so assessed sold according to law. An appropriation of eighty-one thousand dollars of the swamp-land fund was made by the legislature, for the purpose of aiding in carrying out the purposes of this statute. By a supplementary statute, of March 17, 1859, the several boards of commissioners were authorized to issue bonds, to be designated draining bonds. By these bonds it was contemplated that money should be raised at once for the payment of the work, in anticipation of the collection of the assessments. On March 1, 1861, another statute was passed, providing a summary remedy for the collection of these assessments. This statute declared that the homologation of the tableau of assessment should operate as a judgment against the property assessed, and the owners thereof, on which execution might issue as on judgments rendered in the ordinary mode of proceeding. Some work was done under these statutes, by the direction of the commissioners, but the exact amount is not disclosed, though evidently but an inconsiderable fragment of that which was contemplated. The board of commissioners made plans and assessments in their several districts, as required. The assessment rolls were approved and homologated, and judgments rendered against the parcels of land and the owners thereof as the same were described in the assessment rolls. As the assessment was to be upon the superficial foot, obviously within the limits of the city of New Orleans, some portion of the assessment would rest upon the

streets and other public grounds; and in the tableaux the city of New Orleans was named as the owner thereof, and judgments were rendered against it, as owner, for sums amounting in the several districts to $719,926.63.

28 On March 2, 1869, an act was passed to repeal the laws creating the draining districts, and turning over to the Mayors of the cities of New Orleans, Jefferson and Carrollton, and to the Police Jury of the parish of Jefferson, the control of the work and the possession of the property. Nothing seems to have been done under this act, and it is significant only as a declaration of the legislature of the failure of the boards theretofore created under prior statutes. On March 16, 1870, an act was passed uniting the cities of New Orleans and Jefferson into one city—the city of New Orleans.

On February 24, 1871, the legislature passed an act entitled "An Act to provide for the drainage of New Orleans." This act empowered the Mississippi and Mexican Gulf Ship Canal Company to excavate draining canals and build protection levees within the corporate limits of New Orleans and Carrollton. The location of these levees and canals, whether large or small, was to be designated by the board of administrators of New Orleans, and all lands to be acquired for such purposes were to be held by such board for the benefit of that city. To provide funds for paying for this work, all property and rights acquired and held under prior statutes, by drainage commissioners or others, for the purposes of carrying into effect the drainage system, including therein real estate, plans, books and all uncollected assessments, were transferred to the board of administrators of the city of New Orleans; and all assessments theretofore made were confirmed, and in addition the board was authorized to make an assessment of two mills per superficial foot upon the lands within the draining districts. The statute also provided that all moneys so collected should be placed to the credit of the Mississippi and Mexican Gulf Ship Canal Company, and held as funds to be applied only for the drainage in accordance with the provisions of the act, and held in trust for the payment of such company, and ultimately for the benefit of the city of New Orleans should the same not be required for the purposes of drainage. The act also pro-

29 vided the price that should be paid—fifty cents per cubic yard—for the work to be done. In pursuance of this act, W. H. Bell, the surveyor of the city of New Orleans, devised a scheme for draining the lands, and prepared a plan of the work, which was entitled "chart of draining sections of New Orleans, showing present canals, with proposed protection levees and Reservoir Canals, May, 1872." He made an estimate of the cost which, after itemizing different portions, closed with the statement that "the whole work ought not to cost over three million dollars." On April 21, 1871, the city council of the city of New Orleans passed an ordinance, (ordinance No. 814), which recited that the provisions of the act of 1871 made it mandatory upon the council to provide for an extensive system of drainage, and to recognize the claims and accounts of and make settlements with the Mississippi and Mexican Gulf Ship Canal Company for performing such work; and that the city council

deemed certain portions of said acts unconstitutional as depriving it of its proper control of the drainage system, and of its right voluntarily to contract for the work and agree on the price therefor; yet, in view of the importance of the work and the needs of the city, it ordained that "all matters appertaining to drainage, and the protection of the city from inundation, be placed under the immediate charge of the administrator of improvements, aided by the city surveyor," and directed a plan to be made, etc., of the work. Section 4 reads as follows: "The city shall issue warrants for the payment of the work as required by the act of the legislature, and in case of non-realization or non-collection of assets provided for therein, the same to bear eight per cent per annum interest; the said warrants to be issued with the understanding to be inscribed therein or endorsed thereon, that they shall not be enforceable by suit and judgment, but if not paid within one year out of the proceeds of the draining tax and assets they shall be fundable in bonds of the city bearing eight per cent interest, payable semi-annually, having ten years to run, and with due provision for retiring the same, and securing the punctual payment of interest and gradual extinction of the principal. The city shall have power to sell said bonds or give the same in payment of the work performed; but no sale or exchange shall be made at a price less than eighty cents on the dollar, exclusive of interest, and any holder of any fundable warrant, after thirty days' notice, if not paid in money may demand bonds for the same at eighty cents on the dollar."

On April 26, 1872, and act was passed by the legislature making provisions for the debt of the City of New Orleans. Section 13 reads as follows: "That for unbonded debts existing December 31, 1871, and unpaid at the time of the passing of this act, or caused by receipts of certificates of 1871, for revenues proper of 1872, and for excavations and levees, drainage machinery and revetments authorized by law or required for the protection of the city from overflow or inundation, the city may issue from time to time, as they may be required, bonds of the denominations of five hundred and one thousand dollars, having fifty years to run, and bearing seven per cent interest, principal and interest payable in gold in New York and New Orleans, and at any other point that the council may designate, with quarterly coupons, and that the bonds thus issued shall be called the new consolidated debt of New Orleans. No bonds shall be issued but by authority of the council, nor for a lower rate than ninety cents on the dollar. All issued for excavations and levees authorized by act No. 30 of 1871, or by drainage laws previously enacted, shall be marked 'drainage series,' and all taxes collected for drainage, and not required for the payment of drainage warrants, shall be devoted to the purchase from the lowest bidder of bonds issued for drainage; no bid to be accepted above par, and the right reserved to the council to reject all unsatisfactory bids."

The canal company entered upon its work, but, becoming embarrassed, on May 22, 1872, assigned all its rights to Warren Van Norden. By statute of March 23, 1874, the city of Carrollton was annexed to the city of New Orleans, so that the whole drainage dis-

trict came within the limits of the latter city. The canal company, or its assignee, proceeded with the work, continuing it from
31 July 21, 1871, to May 26, 1876. By January 1, 1875, the cost of the work performed amounted to $1,713,635.35. During that time the city officials issued drainage warrants to the amount of $1,422,263.69, and the holders of the warrants exchanged them for bonds endorsed "new consolidated gold bonds, drainage series," at ninety cents on the dollar. On January 1, 1875, by amendment to the constitution of the State, the city of New Orleans was forbidden to increase its municipal debt, in any manner or form, or under any pretext. This amendment in terms allowed the exchange of old for new bonds, permitted the issue of drainage warrants, payable only from drainage taxes, and not otherwise. On February 24, 1876, an act of the legislature was passed authorizing the purchase by the city from the canal company and its assignee of all their rights, under prior statutes, and all tools, implements and machinery in their possession or belonging to them, and the payment for the same in drainage warrants of the same character and payable in the same way as those provided in the act of 1871. At that time the work done by the company and its assignee amounted to $2,242,514.78. On June 7, 1876, the city of New Orleans purchased, as authorized, the rights and property above described the consideration for the same being three hundred thousand dollars in drainage warrants. Little, if any, work was done thereafter by the city, and the abandonment of the work resulted in largely destroying the value of that which had been done, the rusting and decay of the machinery and tools, and the inundation and overflow of the portions of the lands attempted to be drained. The complainant being a bona fide holder of some of the warrants issued to the canal company after the passage of this constitutional amendment above referred to, commenced his action at law and recovered a judgment, which reads as follows: "It is ordered, adjudged and decreed that the plaintiff, James Wallace Peake, do have and recover of and from the defendant, the City of New Orleans, as provided by act No. 30 of 1871, as successor of the drainage commissioners established under acts 165 of 1858 and 191 of 1859, and the various acts of the legislature of Louisiana supplementary thereto and amendatory thereof, the sum of six
32 thousand dollars ($6,000) with eight per cent interest thereon from July 9, 1875, and costs of suit, both the sum recovered and costs of suit to be paid out of said drainage fund."

Thereafter this bill was filed in behalf of himself, as well as all other parties interested.

Mr. Richard De Gray for appellant.

Mr. Grover Cleveland for appellant and for John Crossley & Sons, Limited, holders of drainage warrants.

Mr. Carleton Hunt for appellee.

Mr. Thomas J. Semmes for appellant.

Mr. JUSTICE BREWER, after stating the facts as above, delivered the opinion of the court.

* * * * * * *

The decree will be
Affirmed.

33 *Bill of Complaint.*

Filed May 30, 1891.

Circuit Court of the United States, Eastern District of Louisiana.

No. 12008. In Equity.

JAMES W. PEAKE

vs.

THE CITY OF NEW ORLEANS.

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Eastern district of Louisiana:

James Wallace Peake, of the City of New York and a citizen of the State of New York, brings this, his bill, on his own behalf as well as on behalf of all other parties holding obligations of the same nature and kind as your orator, or obligations that are susceptible of being reduced to the same nature and kind as your orator who may intervene for their interest herein and may contribute to the costs and expenses, and agree to pay their share of the counsel fees herein against the city of New Orleans, a municipal corporation of the State of Louisiana and a citizen of said State.

And thereupon your orator complains and says:

That, under act of legislature of the State of Louisiana, approved March 18, 1858, a scheme was provided for the drainage of certain portions of the parishes of Orleans and Jefferson, through the instrumentality of certain drainage commissions who were to levy certain taxes upon the territory described in the act, and which was to be divided into certain districts, and whose duties, powers and obligations are more fully set forth in said act, which is made part hereof.

And your orator further shows that thereafter further acts, supplementary and amendatory of the above act was duly passed by said legislature, to-wit: Act No. 191 of March 17, 1859, and Act No. 57 of the year 1861, and Act No. 30 of 1871, all of which are made part hereof.

34 And your orator further shows that the commissioners provided for in said act No. 165 of 1859 were duly appointed, qualified and entered upon the discharge of the duties of their offices in the first and second drainage districts, levied assessments and in-

stituted the proceedings thereon, called by said acts, and procured the homologation of the assessment rolls called for by said acts and finally levied execution upon various pieces of property, on said judgments of homologation aforesaid and brought in the same, and also took a surrender of various other pieces of property in satisfaction of the drainage taxes imposed thereon, but the exact details and description of which are unknown to your orator, and are fully and in detail known by the defendant, and all of which land so purchased by said commissioners, as well as that surrendered to them, was so bought and surrendered and held by them, under and pursuant to the acts of the legislature aforesaid, and in trust for the creditors of the drainage fund by said acts of legislature of the State of Louisiana created.

Your orator further shows that pursuant to Act 30 of 1871, hereto annexed as aforesaid, all the rights, duties, obligations and property of the aforesaid drainage commission passed from them to the city of New Orleans, and said act, among other things, directed that all property received by said city of New Orleans should be held in trust for the payment of the Mississippi and Mexican Gulf Canal Company, which was the contractor provided by said act to do the drainage work therein provided for.

And your orator further shows, that among the property that passed under the above act, in trust as aforesaid, to the said City of New Orleans, as aforesaid, were a great number of squares of land, situated in the rear of the city of New Orleans, and bordering on Lake Pontchartrain, bounded by said lake, upperline Canal, Metairie Ridge, Gentilly Ridge and Peoples Avenue Canal.

Your orator further shows, that he is the owner of a certain judgment, based on three drainage warrants issued under Act 30 of 1871, for drainage work done under said act, all dated July 9, 1875, and numbered Nos. 115, 116 and 122, with interest at 8 per cent. per annum, from date until paid, which was duly rendered on
35 May 9, 1887, in suit No. 10,810 of the docket of this Court, payable out of drainage funds, on which execution has been duly issued and returned nulla bona after due demand, as will more fully appear by reference to said suit, judgment, execution and return, all made part hereof.

Your orator further shows that although said city of New Orleans, received said canals and property from said drainage commissioners in the year 1871, she has never sold or disposed of them, but still holds the same and declines and refuses to pay your orator and the other creditors of said drainage, or to take any steps for the collection of the drainage taxes, or otherwise to pay the debts due for drainage, or wind up or execute said trust.

And your orator further shows, that a receiver is necessary and proper to take charge of all the property and assets belonging to said trust, and sell and dispose of the same for the benefit of the creditors thereof.

To the end therefore, that the trust created by Act 30 of 1871, and the other acts of the Legislature of the State of Louisiana, herein-

before referred to, may be closed up and all the assets and property thereof may be sold, and the proceeds of sale be applied to the payment of the creditors of said fund; may it please your Honors to appoint a receiver to take possession and charge of all the property and assets of every nature and kind, real, personal or mixed, now held and possessed by said city of New Orleans, under and pursuant to said Acts of the Legislature of the State of Louisiana, to-wit: Act No. 165 of 1859, No. 191 of 1859, No. 57 of 1861, and Act No. 30 of 1871, and under the direction of the Court, to sell and dispose of the same and apply the proceeds of said sale to the payment of the creditors of said drainage fund, and may it further please your Honors to grant your orator a writ of subpœna, directed to the city of New Orleans, therein and thereby commanding said city on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but without — which is waived, all and singular the premises, and to stand, to perform and
36 abide such order, drection and decree as may be *mete* and agreeable to equity and good conscience; and your orator, as in duty bound, will ever pray.

(Signed) RICHARD DE GRAY,
CHARLES LOUQUE,
*Solicitors for Complainant.*

Richard De Gray, being duly sworn, deposes and says that the complainant is not in the city of New Orleans or within the jurisdiction of the court, to his knowledge; and that all the matters and things set forth in the foregoing bill of complaint are true to the best of his knowledge, information and belief.

(Signed) RICHARD DE GRAY.

Sworn to and subscribed before me, this 30th day of May 1891.

(Signed) E. R. HUNT,
*Clerk.*

37 *Answer.*

Filed November 26, 1892.

No. 12008.

J. W. PEAKE

vs.

CITY OF NEW ORLEANS.

This defendant, now and at all times hereafter, saving and reserv[ing] to itself all and all manner and benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer

thereto, or to so much thereof as this defendant is advised it is material for it to make answer thereto, answering says:

That in 1858, the legislature of the State of Louisiana passed an act, No. 165, approved March 18th, 1858, entitled "An act to provide for the leveeing, draining and reclaiming swamp lands in certain portions of the parishes of Orleans and Jefferson."

That thereafter the legislature of the State of Louisiana passed the following acts, duly approved, namely: Act No. 191 of 1859, Act No. 57 of 1861, and Act No. 30 of 1871, for the purposes in the said acts set forth.

That assuming to act by authority of Act No. 165 of 1858, and of the other acts just enumerated, the commissioners thereunder provided for proceeded to lay assessments and levy drainage taxes, and failing to collect the same, to sell certain property in the drainage districts, and that if title to the same was duly acquired by the commissioners and their successors, it passed in turn to the City of New Orleans in the capacity of statutory trustee, by the proper officers of the City; and respondent makes part of its answer the several acts herein referred to.

And respondent further shows that in the case of the Successors of Irwin, 33 Louisiana Annual Reports, page 63, of the Supreme Court of Louisiana, held Act 30 of 1871 to be unconstitutional as to the fourth drainage district, and the assessments themselves to be null and void; and so, too, it was held by the Supreme Court of Louisiana, to the like effect, in the matter of the Board of
38 Administrators, praying, etc., 34 Louisiana Annual Reports, page 97.

And respondent further shows that in accordance with the decision in the Irwin case, it was likewise held by the Supreme Court of Louisiana, in the case of State ex rel the Mississippi and Mexican Gulf Ship Canal Co. vs. The City of New Orleans, et als., 35 Louisiana Annual Reports, page 68, that the city of New Orleans was not liable for assessments, and judgments therefor, claimed to have been rendered under and in conformity to said Acts 57 of 1861 and 30 of 1871.

And respondent further shows that the ratio decidendi of the Supreme Court of Louisiana in the Irwin case is of direct application to and must control in the case of all the drainage districts, and particularly the first, second and third drainage districts; that Act 57 of 1861 is unconstitutional for like objections thereto with those maintained by the Supreme Court of Louisiana in the Irwin case; and that this Court will follow the same decisions, as being the interpretation of the statutory law of Louisiana by the highest Court of the State. And respondent further shows that Act 57 of 1861 is repugnant to and in violation of Article 115 of the constitution of Louisiana of 1852, and the proceedings thereunder, and by which certain property was seized under execution, sold, and bought in by the drainage commissioners, or otherwise surrendered to the drainage commissioners, were null and void.

And respondent further shows that in the case of Davidson vs. The City of New Orleans, 34 Louisiana Annual Reports, page 176,

the Supreme Court of Louisiana held that where drainage works are shown not to have benefitted the lands assessed, the assessment against them is uncollectable and null. And respondent further shows that the doctrine of the Supreme Court of Louisiana in the Davidson case is applicable to and ought to control in the greater part of the first and third districts, and almost the whole of the second district. That the drainage works have been abandoned, and benefit to the property proposed can not be seen and traced, and in the presence of the facts it is against good conscience and equity to enforce the judgments based upon said assessments.

39 Respondent further shows that Act 51, of 1869, was intended to repeal, and actually did repeal Act 57, of 1861, and for this reason, additional to those already assigned by respondent, proceedings under said Act 57 of 1861, after the passage and approval of Act 51 of 1869, were null and void, and it was not competent by means of such proceedings to convey title.

And repondent further shows that under none of the acts hereinbefore mentioned was any authority conferred on the Board of Commissioners or on the Board of Administrators to assess the city of New Orleans on its streets and public places, and that all assessments for drainage against said city, on its streets and public property, were null and void, and that it is not competent to make any conveyances of property based upon said assessments and upon said proceedings, and that if any such have been made that the same are null and void.

But respondent further shows that if the Court should, notwithstanding the premises, hold that any part or parts of the land pretended and assumed to be designated in complainant's bill of complaint passed to respondent, then respondent shows that the same did so pass to respondent only in respondent's fiduciary character as statutory trustee of the drainage fund, involuntarily burdened therewith, and that respondent can be dealt with herein, and treated by the complainant in no other capacity whatsoever.

And, further answering, respondent shows that complainant's bill of complaint, where it sets forth that among the property that passed under the acts of the legislature hereinbefore recited, were a great number of squares of land situated in the rear of the City of New Orleans and bordering on Lake Pontchartrain, bounded by said Lake Upperline Canal, Metarie Ridge, Gentilly Ridge and People's Avenue Canal, furnishes no description whatsoever of the lands in question and respondent further shows that all transfers of land are of public record, and are accessible to the complainant, and that when he lays claim, as he does in these proceedings, charging, as he also does, that respondent is compellable to transfer title to the said lands to the receiver herein, complainant is clearly bound

40 to furnish particulars with reference to said lands and a due description thereof, and to point out where they are situated, and what the measurements thereof may be, and otherwise to give respondent such information and notice in relation thereto as may suffice to put respondent upon its proper defence.

And, further answering, respondent admits that on May 9, 1887, complainant, in suit No. 10,010 of the docket of this court, obtained judgment, based upon drainage warrants, for six thousand dollars, with eight per cent. interest thereon from July 9, 1875, and costs of suit, payable out of said drainage fund, and that execution issued thereon, which was returnable nulla bona, as appears by reference to said judgment, execution and return.

And, further answering, respondent denies that the City of New Orleans ever received lands except by the transfer of such title as the drainage commissioners had, which had been declared null by the Supreme Court of Louisiana, and shows that the said city of New Orleans has done all in its power to collect the drainage taxes and discharge its duties under the legislation hereinbefore recited, but that said collection has been made impracticable by the said decision of the Supreme Court of Louisiana, and respondent discharged from all responsibility in the premises by said decisions and by the decision of the Supreme Court of the United States in Peake vs. City of New Orleans, reported in 139 U. S. Reports, pages 349 to 361.

Further answering, respondent shows that upon the application by complainant to this Court for the appointment of a receiver, as in complainant's said bill of complaint is more fully set forth, the mayor and council of the city of New Orleans, resolved on the 9th of June, 1891, that they deemed it unadvisable that the city should petition this Court for the administration and liquidation of the drainage fund, and suggested that the city attorney be instructed to that end. And respondent further shows that upon a rule taken herein, the Court appointed J. W. Gurley, Esq., receiver and that said Gurley has qualified under said appointment, and that respondent has never opposed and does not now oppose his entering upon the discharge of his duty as receiver, but only requires his gestion in office should be confined to the trust
41 property, if any there is, resulting from the drainage trust and none other, and that the said receiver should not take and possess the same in detriment to, and destruction of respondant's rights as a creditor of the drainage fund as determined by the U. S. Supreme Court in the case of Peake vs. City, reported in 139 U. S. Reports, pages 249 to 351.

Further answering, respondent shows that the city of New Orleans advanced $1,600,000 to the drainage fund in bonds of the City and is a creditor of the drainage fund for hundreds of thousands of dollars, as appears by reference to the decision of the Supreme Court of the United States in the said case of Peake vs. City of New Orleans, being the same parties now before the Court, and which decision and opinion of the Supreme Court of the United States is made part of this answer, and respondent hopes it may have the benefit of said decision now and at all times, as if it had availed itself thereof in the form of a plea; and respondent shows that it is entitled to hold all the assets and property acquired by it under the legislation hereinabove referred to, if any there are, until the amount of this indebtedness, which was incurred for the benefit

of said drainage fund, shall be returned to the city, and respondent shows that it has a lien upon the said assets and property wherever the same may be found, and that respondent ought not to be compelled to deliver said assets and property, if any there are, until the disbursements so made by respondent for the benefit of the drainage fund shall be repaid, and that no conveyance to the receiver ought to be ordered by the court until respondent has been reimbursed the amounts so paid out by it, as aforesaid.

But should the court hold otherwise and decree that respondent ought to deliver to the receiver the said assets and property, then respondent prays that the decree directing the said delivery may reserve all of respondent's rights, and that respondent be recognized as a preferred creditor of the drainage fund for the amount of $800,000.00, or whatever other amount in excess thereof may be shown due to your respondent by said fund, with first lien and privilege and right of pledge in favor of respondent upon the
42 said fund and moneys realized and to be realized from debts due the same.

And this respondent denies all and all manner of unlawful combination or confederacy, wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein well and sufficiently answered, traversed and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and prove as the Court shall direct; and this defendant being a municipal corporation, makes this its said answer under its corporate seal with the attest of said seal, and the mayor of said city of New Orleans, keeper of said seal, as witness the impress of said seal, and the signature of Joseph A. Shakspeare, mayor of the city of New Orleans; and humbly prays to be hence dismissed, with reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JOS. A. SHAKSPEARE,
[SEAL.] *Mayor.*

(Signed) HY. RENSHAW,
*Asst. City Att'y, Solicitor for Respondent.*

(Signed) CARLETON HUNT,
*City Att'y, Solicitor for Respondent.*
43 *Decree Appointing Receiver.*

Extract from the Minutes.

April Term, 1891.

NEW ORLEANS, Saturday, June 13, 1891.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, Circuit Judge.
" Hon. Edward C. Billings, District Judge.

Proceedings Before His Honor the District Judge.

No. 12008.

J. W. PEAKE

vs.

CITY OF NEW ORLEANS.

The motion for the appointment of a receiver in this cause having come on to be heard, and the solicitors for the respective parties having been heard thereon, now, on motion of Charles Louque, solicitor for the complainant, it is ordered by the Court, the Hon. E. C. Billings, presiding, that J. W. Gurley be, and he is hereby appointed receiver of all the property, equitable interests, things in action and effects of the drainage fund, held by the defendant, the City of New Orleans, in trust, and vested with all the rights and powers of a receiver in chancery, according to law and the rules and practice of this Court, upon his filing with the clerk of this Court, a bond for the faithful performance of his duties as such receiver, in the penal sum of $2,000.00, and the approval thereof by this Court.

And it is further ordered, that the said defendant appear before A. G. Brice, Esq., master in chancery of this court, at such time or times and place as he may designate, and execute and deliver to said receiver an assignment, assigning, transferring and conveying to him all the aforesaid property, equitable interests, things in action and effects, and all books, papers and vouchers relating thereto, and that the city appear before such master, from time to time, as said master may require, and submit to such examination as said master shall direct in relation to the said property and effects, and
44 the condition thereof.

And the said complainant or the said receiver shall be at liberty to apply to the Court, from time to time, for such further order or direction as may be necessary.

45 *Extract of Inventory Taken by J. D. Taylor.*

STATE OF LOUISIANA,
*Parish of Orleans, City of New Orleans:*

Be it known, that on the eighteenth day of November, in the year of our Lord, one thousand eight hundred and ninety-one, and of the Independence of the United States of America, the one hundred and sixteenth,

I, Joseph Dewey Taylor, a notary public, in and for the parish of Orleans, and official notary of the city of New Orleans, did at the request of the Honorable Otto Thoman, comptroller of the city of New Orleans, make a descriptive inventory of all property, movable and immovable, belonging or appertaining to the several drainage

districts of the City of New Orleans, as the same was pointed out to me, by Mr. Louis Laroque, of this city, all of said movable property hereinafter described being situated, in part of the office of said city comptroller of the city of New Orleans, which property is described as follows, to-wit:

* * * * * * *

Same description as contained in the advertisement hereinafter printed.

* * * * * * *

And there being nothing further to be included in this inventory of which I, notary, have been informed, I do now close the same.

In testimony whereof, said witnesses have signed this inventory, together with me, notary.

(Original signed) J. B. ROSSER, JR.
C. G. REBENTISCH.
J. D. TAYLOR,
*Notary Public.*

A true copy of the original, New Orleans, November 25, 1891.

[L. S.] (Signed) J. D. TAYLOR,
*Notary Public.*

46 *Petition of Receiver to Sell Property and Order.*

No. 12008.

JAMES W. PEAKE

vs.

CITY OF NEW ORLEANS.

Petition of Receiver to Sell Property.

Filed January 15, 1892.

To the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

The petition of J. W. Gurley, receiver, in the case of James W. Peake vs. The City of New Orleans, No. 12,008, with respect shows: That an act of transfer and assignment, executed in conformity to the orders of this Honorable Court, of dates 13th June, 1891, and December 5, 1891, and December 31, 1891, by the defendant, the city of New Orleans, of the property involved in this cause, is now on file, together with an inventory of the property transferred, made by Jos. D. Taylor, notary public; that it is necessary in the interest

of all parties that said property be sold and the proceeds thereof be brought into court to abide its further order; wherefore, he prays for an order directing him to sell the said property at public auction after due advertisement, for cash, and authorizing and empowering him to execute and deliver to the purchasers thereof good and sufficient titles, free from all liens, mortgages and encumbrances at the expense of such purchasers, if any.

(Signed) R. DEGRAY AND
CHAS. LOUQUE,
*Solicitors.*

47 *Order.*

Let the receiver sell the property contained in the said inventory, as prayed for, after advertisement in two newspapers, published in the city of New Orleans, viz: One published in the English and one in the French, for the term required by law for judicial sales of real estate at public auction, to the highest bidder for cash; and let the receiver be authorized and empowered to execute and deliver to the purchasers good and valid titles, free from all liens, mortgages or encumbrances if any there are.

(Signed) EDWARD C. BILLINGS,
*Judge.*

New Orleans, January 15, 1892.

48 *Receiver's Report of Sale of Property.*

Filed March 3, 1892.

To the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

The undersigned receiver, with respect reports: That in obedience to an order of this Honorable Court, entered on the 15th day of January, 1892, in the case in equity of James W. Peake vs. The City of New Orleans, No. 12,008 of the docket, directing the sale, for cash, at public auction, after due advertisement, of all the property transferred and assigned to him, as receiver, by the said city of New Orleans, the defendant in the above cause, by act of transfer and assignment on file, executed by the Mayor of said city on the 11th day of January, 1892, before Jos. D. Taylor, notary under and in conformity to orders of Court of dates 13th of June, and 5th and 13th of December, 1891, he did cause all the real estate so transferred to him to be advertised for the term of thirty days, as required by law for judicial sales of real estate in the parish of Orleans, to-wit: in the Daily Picayune in the English language, and in the L'Orleanais in the French language, newspapers published in the city of New Orleans, as for sale at public auction on the 27th of February, 1892, at 12 o'clock m., at the Canal Street entrance to the custom house building, in the said city, to the highest bidder for cash, which said advertisements of said property were as follows:

## In the Daily Picayune—English Advertisement.

Judicial advertisement. Receiver's sale of valuable real estate lying in the rear of the City of New Orleans.

Under orders of the Honorable the Circuit Court of the United States for the Eastern District of Louisiana, holding sessions at the city of New Orleans, of date 15th January, 1892, rendered in the case of James W. Peake vs. The City of New Orleans, No. 12,008 of the docket of said Court, I, the undersigned receiver, will proceed to sell, at public auction, in front of the main entrance on Canal street, of the Custom-house building, in said city, on the 27th day of February, 1892, at 12 o'clock M., to the highest bidder, for cash, all the right, title and interest of the city of New Orleans as the trustee of the drainage fund, and more especially such right as the
49 said city has derived from the commissioners of the first and second drainage districts of the parishes of Orleans and Jefferson, under act No. 30 of 1871 of the legislature of Louisiana, in and to the following described property, as per inventory on file in said cause, and therein more fully described, to-wit: 1. A tract of land, beginning at a point on the Bayou St. John, on the south line of the lands belonging to the lands of the Milne Asylum of the Destitute Orphan Girls, thence on the Bayou St. John 575 feet 6 inches, more or less, thence between parallel lines to Milne street, measuring on said street 575 feet, more or less, bounded as follows: On the north side by the lands of Milne Asylum for Destitute Orphan Girls, on the west by Milne street, on the south by the lands of M. Moran, on the east by the Bayou St. John, the whole as per plan of J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the commissioners of the first draining district, parish of Orleans, being the same property acquired by the commissioners of the first drainage district and at sheriff's sale, on the 2d of July, 1863, under fi. fa. from the Third District Court of New Orleans, No. 17,028, of the docket. 2. Certain squares and parts of squares of ground, according to a plan by Wrotnoski, surveyor, being as follows, to-wit: Certain portions of each of twenty-three squares of ground, which are designated by the Nos. 992 to 1014, both inclusive, which portion of each north side of each said square, fronting on Polk street and measuring 7 feet 2 inches and 2 lines on the Bayou St. John, the same front on Milne street, and between parallel lines through each of said squares, from said bayou to Milne street.

The north half of certain other squares of ground, designated on said plan by the Nos. 1067 to 1089, both inclusive, the said half of said square No. 1067 fronting 148 feet, more or less, on the Bayou St. John, and thence along the southern boundary of all of said half squares between parallel lines to Milne street, upon which said half square 1089 fronts 146 feet, more or less, and all of which said half squares are bounded on the north side by Fremont street.

Forty-six certain squares of ground next to the above
50 described half square of the north side, and which are designated on said plan by the numbers from 1094 to 1116, both

inclusive, and from 1119 to 1141, both inclusive, which said squares 1116 to 1119, have each 296 feet, more or less, and thence running west between said parallel lines to Milne Street, upon which said squares, Nos. 1094 to 1141, front each 292 feet, more or less, and they are bounded between said parallel lines by Harrison avenue on the north and Fremont street on the south.

Parts of squares Nos. 1147 to 1168, both inclusive, the same being composed of 50 feet, 9 inches and 2 lines taken from the southern front of Harrison avenue each of said squares *and* running between parallel lines from the Bayou St. John to Milne street, upon each of which is a front of 50 feet, 9 inches and 2 lines, all according to said plan of said Wrotnoski, being the same property acquired by said commissioners of said draining district by act before Hugh Madden, notary public, on the 18th of September, 1863, from the Milne Asylum for Destitute Orphan Girls.

3. Certain portion of each of twenty-three squares of ground designated by the numbers from 1147 to 1168, both inclusive, as per plan of the same and other property made by A. T. Wrotnoski, surveyor and civil engineer, dated July 1, 1863, and deposited in the office of Hugh Madden; said squares running east and west from Milne street on the west to Bayou St. John on the east, and said part thereon being 241 feet, 2 inches and 6 lines of each of said squares, commencing at a point 50 feet, 9 inches and 2 lines from the southern boundary of said squares fronting on Harrison avenue, and running north toward Lane street, on which they front.

Forty-six certain squares next to above and designated on said plan by the Nos. 1169 to 1190, both inclusive, and from 1197 to 1218, both inclusive, and comprised within parallel lines, running from the Bayou St. John on the east, to Milne street on the west, Twiggs street on the north and Lane street on the south.

A certain small strip of land, being 6 feet, 9 inches and 2 lines, taken from the southern front of each of the twenty-three squares of ground designated on said plan by the Nos. 1297 to 1318, both inclusive, which front on Down street, and running between parallel lines from Milne street on the west, where it is 6 feet, 9 inches and 2 lines, through each of said squares to the Bayou St. John, upon which it has the same front, being the same property acquired by said commissioners of said first draining district on the 10th day of December, 1863, before Hugh Madden, notary public, from the Milne Asylum for Destitute Orphan Boys.

51

4. A tract of land beginning at the north line corner of the Bayou St. John of the lands belonging to the Milne Asylum for Destitute Orphan Boys, having 12 arpents on the Bayou St. John, more or less thereon, between parallel lines, to Milne street, bounded as follows: On the north by the lands of the Society for the Relief of Destitute Orphan Boys, on the west by Milne street, on the south by land of the Milne Asylum for Destitute Orphan Boys, and on the east by the Bayou St. John; the whole as per plan of J. A. D'Hemecourt, surveyor, dated 30th December, 1870, and deposited in the office

of the said commissioners of said first draining district being the same property acquired by said commissioners at sheriff's sale on the 21st day of July, 1863, under fi. fa. from Third District Court of New Orleans, in suit against Female Orphan Asylum, No. 17,028 of Docket of said Court.

5. A tract of land beginning at the north line corner of the Bayou St. John, of the lands belonging to the Female Orphan Society and having 12 arpents, more or less, on the Bayou St. John, thence along May street to Milne street, measuring 45 arpents, 80 feet, more or less, thence south, along Milne street, 9 arpents, 142 feet, more or less, thence on a line to the Bayou St. John, measuring 45 arpents and 96 feet, more or less, bounded on the north by the lands of the late J. B. Genois, on the west by Milne street, on the south by lands of the Female Society, and on the east by the Bayou St. John, as per plan of J. A. D'Hemecourt, surveyor, dated December 30, 1860, deposited in the office of the Commissioners of the first draining district being the same property acquired by said commissioners of the first draining district at sheriff's sale on the 21st day of July, 1863, under fi. fa. from Third District Court of New Orleans, at suit of Commissioners vs. Society for Relief of Destitute Orphan
52 Boys, No. 17,028.

6. A tract of land beginning at a point on the Bayou St. John, at the north line of the lands of the Society for the Relief of Destitute Orphan Boys, thence on the Bayou St. John 2 arpents, more or less, and between parallel lines, to Milne street, bounded as follows: On the north by the lands of Lavergne, on the south by lands belonging to the Society for the Relief of Destitute Orphan Boys, and on the east by Bayou St. John, as per plan of J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the commissioners of the first draining District, being the same property acquired by said commissioners at sheriff's sale on 12th day of September, 1863, under fi. fa. from Third District Court of New Orleans, at suit of Commissioners of First Draining District vs. Jean Genois, No. 17,028.

7. A tract of land beginning at Fourth street, running back obliquely through the division of squares at an angle of about 7 degrees to the north, 20 arpents, more or less, along said line to Tenth street, thence toward the lake, thence on the lake to Fourth street, bounded as follows: On the north by Lake Pontchartrain, on the west by Tenth street, on the north by lands of Genois, and on the east by Fourth street, adjoining the property late of Laurent Millaudon, all as per plan by J. A. D'Hemecourt, surveyor, dated December 30, 1860, and deposited in the office of the Board of Commissioners of the first draining district, being the same property acquired by said commissioners of said first draining district at sheriff's sale on the 21st of July, 1863, under writ of fi. fa. from Third District Court of New Orleans, at suit of Commissioners vs. Heirs of Lavergne, No. 17,028 of docket.

8. One square of ground, situated in the second district of this city, designated by the No. 902, bounded by Taylor avenue, Scott street and St. Peter street, and Orleans avenue, divided in 19 lots, numbered from 1 to 19, inclusive, and having the following measurements, to-wit: 240 feet, 5 inches and 2 lines front on Taylor avenue, the same front on Scott street, 292 feet front on St. Peter and the same front on Orleans avenue.

One other square of ground, situated in the same district,
53 designated by the No. 903, bounded by Taylor avenue, Scott and St. Ann streets, and Orleans avenue, divided into 25 lots of ground, numbered from 1 to 25, both inclusive. Said square measures as follows: 349 feet, 11 inches and 2 lines front on Taylor avenue, the same front on Scott street, 292 feet front on Orleans avenue, the same front on St. Ann street; being the same property acquired by said commissioners of said first draining district on the 22d January, 1863, from Chas. Rolling, by act before Jos. Cuvellier. **N. P.**

NOTE.—The above two squares are assessed by the city to Geo. Ingraham.

9. A certain piece of ground, situated in the town of Carrollton, late parish of Jefferson, in this State, designated by the No. 245 A, bounded by Canal avenue, Edinburgh, Dublin and Fifteenth streets, measuring 240 feet front on Dublin street, the same in the rear, by a depth of 35 feet, bounded on one side by the Jackson Railroad and on the other by Fifteenth street, on both of which last named streets it fronts; being the same property acquired by the commissioners of the second draining district on the 25th day of October, 1866, from J. B. Bailey, by act before A. Hero, Jr., N. P., assessed by the city to J. L. Gubernator and the city of New Orleans, one undivided half each, as square No. 537.

10. A certain square of ground, situated in Carrollton, late parish of Jefferson, bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) streets, composed of 24 lots, numbered from 1 to 24 inclusive, being the same property acquired by the commissioners of the second draining district of the 31st December, 1866, from F. N. Fortier, by act before A. E. Bienvenu, **N. P.**

Terms.—The herein described properties will be sold separately in blocks as above numbered, free of all liens, mortgages, incumbrances and taxes, if any there be, to the highest bidder, for cash; 10 per cent of the price to be paid at time of adjudication to bind the sale, the balance to be paid on passing titles.

Acts of sale before W. Morgan Gurley, notary public, Morris build-
54 ing, at the expense of the purchasers.

J. W. GURLEY,
*Receiver,*
R. DE GRAY AND
CHAS. LOUQUE,
*Solicitors for Complainant.*

55 *Judicial Announcement of Sale of Property in the French Language in Conformity with Report of the Receiver.*

Annonce Judiciaire.

Vente de receveur de propriétés foncières sises au fond de la ville de la Nouvelle-Orléans.

D'aprés les ordres donnés par l'honorable Cour de Circuit des Etats-Unis pour le District Est de la Louisiane, siégeant dans la ville de la Nouvelle-Orleans, en data du 15 janvier, dans l'affaire de M. James W. Peake vs. la ville de la Nouvelle-Orléans, No. 12008 du dossier de la dite Cour; Je sousigné Receveur, procéderai à la vente à une enchère publique, devant l'entré principale de la Douane de cette ville, rue Canal, le 27 me jour du mois de Février 1892, à 12 M.
56 au plus fort et denier enchèrisseur, pour de l'argent comptant, tous les droits, titres et intérêts de la ville de la Nouvelle-Orléans, administrateur de de Fonds de Drainage, et plus particulièrement a la vente de tels droits que la dite ville a acquis des commissaires des premier et second districts de Drainage des paroisses Orléans et Jefferson, d'après l'acte No. 30 de 1871 de la Lègislature de la Louisiane dans la propriété decrité ci-doussous, deaprès l'inventaire dans les archives de la dite cause, et ci-dessous plus amplement decrit.

1°. Une certaine portion de terre, commencant à un certain point du Bayou St. Jean, sur la ligne Sud des terres appartenant aux terres de L'Asil. "Milne" des orphelines destituées, de là sur le Bayou St. Jean 575 pieds et 6 pouces, plus ou moins, puis entre les lignes parallèles de la rue Milne, mesurant sur la dite rue 575 pieds, plus ou mouns bornée comme suit: Au côté Nord par les terres de l'Asile "Milné" pour les orphelines destituées, au côté Sud par les terres de M. Moran, au côté est par le Bayou St. Jean; le tout d'après le plan de M. I. A. d'Hemécourt, arpenteur, dâté du 30 décembre 1860 et déposé dans le bureau des commissaires du premier district pour la paroisse d'Orléans, étant la même propriété acquise par les Commissaires du premier district de drainage à la vente du Shérif le 21 juillet 1863, d'après l'ordre de "fi. fa. de la troisième Cour de District de la Nouvelle-Orléans, No. 17,028 du Dossier.

2°. Certains carrés et parties de carrès de terrain, d'apres le plan de Wrotnoski, arpenteur, comme suit:

Certaines portions, chacune de 23 carrés de terrain désignés par les Nos. 902 aux Nos. 1014, tous deux inclusivement, laquelle portion de chaque, 23 carrés de terrain étant prise de côté nord de chaque dit carré faisant face à la rue Polk, et measurant 7 pieds 2 pouces et 2 lignes sur le Bayou Sait-Jean, la même facade sur la rue Milne et entre les deux lignes parallèles, àtravers chaque dit carré à partir du Bayou St. Jean à la rue Milne.

La Moitié côte-nord, de certains autres carrés de terrain, désignés dans de dit plan par les Nos. 1067 au 1089, tous deux inclusive-

ment; la dite moitié du dit carré No. 1067 ayant une facade de 148 pieds, plus ou moins, sur le Bayou Saint Jean, et de là le long de La Moitié côté-nord, de certains autres carrés de terrain, désignés à la rue Milne, sur laquelle la dite moitié de carré No. 1089, a une facade de 146 pieds, plus ou moins, et tous ces dits demi-carrés étant bornés au côté nord par la rue Fremont.

Quarante-six carrés de terrain situés à côté du dit carré du côté nord, décrit ci-dessus, et qui sont désignes dans le dit plan par les Nos. partant de 1064 au No. 1116, tous deux inclusivement, et due No. 1119 au No. 1141, tous deux inclusivement, que les dits carrés 1116 et 1119 ont chacun 296 pieds, plus ou moins, et de là allant à l'ouest entre les dites lignes parallèles à la rue Milne, sur laquelle les dits carrès Nos. 1094 et 1141 ont une facade de 292 pields, plus ou moins, et bornés entre les dites lignes parallèles par l'Avenue Harrison, du côté nord, et par la rue Fremont du côté sud.

Des parties des carrés Nos. 117 au 1168, tous deux *incl* inclusivement, et des Nos. 1197 aux Nos. 1218, tous deux inclusivement, et pouces, et aeux lignes prises de la facade due Sud de l'Avenue
57 Harrison, chacun des dits carrés allant entre les lignes paralléles du Bayou Saint-Jean à la rue Milne, sur chacune desquelles il y a une facade de cinquante pieds 9 pouces et 2 lignes.

Le tout d'après le dit plan du wit Wrotnoski, ètant la même propriété acquise par les commissaires du dit premier district de drainage par une acte passé par devant M. Hugh Madden, Notaire Public, le 18 septembre 1863,—de l'asile "Milne" pour les Orphelines destituées.

3°. Certaine portion de chacun des 23 carrés de terrain, désignées par les numéros partant due No. 1147 au No. 1168, tous deux inclusivement, d'après le plan de la dite propriété fait par M. A. T. Wrotnoski, arpenteur et ingénieur civil, daté du premier juillet 1863, et deposé dans le bureau de M. Hugh Madden, les dis carrés allant á l'est et á l'ouest, de la rue Milne, du coté ouest, et au Bayou Saint-Jean, du côté est, et la dite partie étant 241 pieds, 2 pouces et 6 lignes de chacun des dits carrés commencant á un point de 10 pieds, 9 pouces et 2 lignes de la limite sud des dits carrés, faisant face á l'avenue Harrison, et allant au nord á la rue Lane sur laquelle ils font facade.

Quarante-six carrés a côté de ceux ci-dessus mentionnés et désignés dans le dit plan par les Nos. 1169 aux Nos. 1190 tous deux inclusivement, et des Nos. 1197 aux Nos. 1218, tons deux inclusivement, et compris dans les lignes parallèles partant du Bayou St.-Jean, au côté Est, a la rue Milne, au côté Ouest, la rue Turgys au côté Nord et la rue Lane au côté Sud.

Un petit morceau de terrain avant 6 pieds, 9 pouces et 2 lignes pris de la facade sud de chacun des dits 23 carrés de terrain, désigné dans le dit plan par les Nos. 1297 á 1318 tous deux inclusivement, qui font face à la rue Down et qui courent entre less lignes parallèles de la rue Milne, au côté ouest, ou il a une facade de 6 pieds, 9 pounces et 2 lignes á travers chacun des dits carrés au Bayou St.-Jean sur lequel il a la meme facade, étant la même propriété acquise par les dits commissaires du dit premier district de Drainage, le 10e jour du mois

de décembre, 1863, par devant M. Hugh Madden, notaire-public de l'asile de Orphelins destitués.

4°. Une étendue de terrain, commencant à la ligne Nord de l'angle du Bayou St.-Jean, des terres appartenant au Milne Asylum for Destitute Orphan Boys. Comprenant douze arpents de face au Bayou St. Jean, plus ou moins, entre les lignes parallèles à la rue Milne, et bornée comme suit: au Nord par les terres de la Society for the Relief of Destitute Orphan Boys; à l'ouest par l'Asile des Orphelins de la rue Milne, et à l'Est par le Bayou St. Jean, le tout d'aprés un plan dressé par J. A. d'Hemecourt voyer, daté du 30 décembre 1860 et déposé aux Bureax des dits commissaires du dit Premier District de Drainage, étant la même propriété acquise par les dits commissaires à la vente par le sherif, du 21me jour de juillet 1863, sous fi. fa. de la Premiére cour de District de la Nouvelle-Orléans, dans l'affaire Female Orphan Asylum, No. 17028 du Dossier de la dite cour,

5°. Une étendue de terrain, commencant à la ligne Nord de l'angle du Bayou St. Jean, des terres appartenant à la Female Orphan Society, comprenant 12 arpents, plus ou moins, faisant face
58 au Bayou St. Jean puis à la rue May jusqu' à la rue Milne, ayant 45 arpents 80 pieds, plus ou moins; de là, au Sud dans la direction de la rue Milne, 9 arpents 142 pieds, plus ou moins, borné au Nord par les terres de feu J. B. Genois, à l'Ouest par la rue Milne, au Sud par les terres de la Female Society et à l'Est par le Bayou St. Jean d'apreès un plan dressé par J. A. d'Hémécourt, Voyer, portant la date due 30 décembre 1869, dèposé dans les Bureaux des commissaires du Premier District de Drainage á une vente faite par le Sherif le 21me jour de juillet 1863, sous fi. fa. da Troisième Cour de District de la Nouvelle-Orléans dans l'affaire des commissaires contre Society for Relief of Destitute Orphan Boys, No. 17028.

6. Une étendue de terrain commencant á un endroit situé sur le Bayou St. Jean á la ligne Nord des terres de lá Society for the Relief of Destitute Orphan Boys, de la deux arpents, plus ou moins, faisant face au Bayou St. Jean, entre lignes parallèles à la rue Milne, bornée comme suit: au Nord, par les terres de Lavergne et lac Ponchartrain, á l'Ouest, par la rue Milne, au Sud, par les terres appartenent á la, "Society for the Relief of Destitute Orphan Boys," et á l'Est par le Bayou St. Jean d'aprcès un plan dressé par J. A. d'Hémécourt, Voyer, daté du 30 décembre 1860, et déposé aux bureaux de commissaires du Premier District de Drainage, et étant la même propriété, acquise par les dits commissaires á une vente faite par le Shérif, le 12 me jour de septembre, 1863, sous fi. fa. de la 3e cour de la Nouvelle-Orléans dans l'affaire des commissaires du ler District de Drainage contre Jean Genois No. 17,028.

7°. Une étent due de terrain commencant à la rue Quatrième, et se dirigeant obliquement á travers la division des ilets à un angle d'àpeu près 7 degrès vers le Nord, vingt arpents, plus ou moins, suivant la dite ligne á la rue Quatrieme, de là vers le Lac, de là suivant le Lac vers la rue Quatrième, bornée comme suit: Au Nord, par le Lac Ponchartrain; á l'Ouest, par la rue Dixième; au Sud, par les terres de Genois, et a l'Est, par la rue Quatrième; contigü au propriétés de

feu Laurent Millaudon, le tout après un plan dressé par J. A. d'Hémécourt, Voyer, date due 30 decémbre 1860, et déposé aux bureaux des Commissaires du premier District de Drainage, étant la même propriété acquise par les dits Commissaires du premier District de Drainage á une vent faite par le Sherif, le 21me jour de juillet 1863, sous fi. fa. de la 3me Courde District de la Nouvelle-Orleans, dans l'affaire des commissaires contre les héritiers de Lavergne, No. 17028 du dossier.

8°. Un caré d'ilet situé dans le Second District de cette ville, et désigné par le No. 902, borné par les rues Taylor avenue, Scott, St. Pierre et avenue Orléans, divisé en 19 lots portant les Nos. 1 à 19 inclusivement, et ayant les dimensions suivantes, 290 pieds, 5 pouces et 2 lignes; faisant face à l'avenue Taylor, la même facade sur la rue Scott; 292 pieds de face a la rue St. Pierre et la même facade sur l'avenue Orléans.

Un autre carré d'ilet situé dans le même district, désigné par le No. 903, borné par l'avenue Taylor, les rues Scott et Ste. Anne et l'avenue Orléans, divisé en 25 lots portant les Nos. 1 à 25 inclusivement.

59 Le dit carré d'ilet mesure comme suit: 349 pieds, 11 pouces et deux lignes de face aur l'avenue Taylor, la même facade sur la rue Scott. 292 pieds de face sur l'avenue Orléans et la même facade sur la rue Ste. Anne, étant la même propriété acquise par les dits Commissaires du dit Premiere District de Drainage le 22me jour de janvier 1863, de Charles Rolling, par acte passé devant Jas. Curvelier, Notaire public.

Les, deux carrés d'ilets ci-dessus désignés sont assessés par la ville au nom de George Ingraham.

9°. Un lot de terrain situé dans la ville de Carrollton, ci-levant Paroisse Jefferson, dans cet Etat, désigné par le No. 245 A, borné par l'avenue Canal, les rues Edinburg, Dublin et Quinziéme; et ayant les dimensions suivantes: 240 pieds de face à la rue Dublin, la même facade à larrière par 35 pieds de profundeur, bornè d'un coté par le Jackson R. R., et de l'autre par la Quinzième rue étant la meme propriété acquise par les Commissaires du Second District de Drainage, le 25me jour d'octobre 1866, de J. B. Bailey, par acte passé devant A. Hero, Jr., notaire public, et assessée par la ville au nom de J. L. Gubernator et la ville de la Nouvelle-Orleans, (une moitié divisée pour chacun) comme le carré d'ilet portant le No. 537.

10°. Une certain étenduc de terrain, situé dans la ville de Carrollton, ci-devanat Paroisse Jefferson, borné par les rues Quatorziéme, Madison, Colapissa et Adam, (maintenant Dublin) composé de 24 lots de terrain portant les Nos. 1 á 24 inclusivement, et étant la meme propriété acquise par les dits Commissaires du Second District de Drainage le 31me jour de décembre 1866, de J. N. Fortier, par acte passé devant A. E. Bienvenue, notaire public.

Conditions:—Les propriétés décrites ci-dessus seront vendues séparément, en blocks ci dessus énumérés, libres de tous droits ou prétentions, hypothèques, obstacles et taxes, si toutefois il y en-ait au plus haut enchérisseur pour argent comptant, 10 pour cent. du prix

devra être payé á l'époque de l'adjudication pour lier la vente; la balance sera payée en passant las titres.

Les actes de vente sont dévant W. Morgan Gurley, notaire public, betisse Morris, aux dépens des acheteurs.

(Signé) J. W. GURLEY,
*Receiver.*
R. DE GRAY ET
CHARLES LOQUE,
*Solliciteurs des Plaintiffs.*

That, in conformity to said advertisements, he did, at the time and place therein mentioned, proceed to offer the said lands separately, in blocks, as in said advertisements by numbers designated, to the highest and last bidders for cash—requiring from each purchaser a deposit of ten per cent. in cash, on the amount of the price at which the same might be adjudicated to him. And thereupon after duly crying the said properties in the order advertised, Dr. C. A. Gaudet, being the highest and last bidder for the several blocks designated in said advertisements as numbers one, two,
60 three, four, five, seven, ten, the same were severally adjudicated to him, as follows:—

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Block No. | 1, | bought | by | Dr. | C. | A. | Gaudet, | at | price | of.. | $105.00 |
| " " | 2, | " | " | " | " | " | " | " | " | .. | $620.00 |
| " " | 3, | " | " | " | " | " | " | " | " | .. | $1,000.00 |
| " " | 4, | " | | | " | | | " | | .. | $400.00 |
| " " | 5, | " | | | " | | | " | | .. | $500.00 |
| " " | 7, | " | | | " | | | " | | .. | $350.00 |
| " " | 10, | " | | | " | | | " | | .. | $150.00 |
| | | | | | | | | | | | $3,125.00 |

on the price of which he deposited 10 per cent., viz.: $312.50 in cash.

V. Mauberet being the last and highest bidder on Block No. 8, the same was adjudicated to him at $190.00, on the price of which he deposited ten per cent, viz:—$19.00.

W. J. Brodie being the highest and last bidder on Block No. 9, the same was adjudicated to him at $65.00, on the price of which he deposited ten per cent., viz: $6.50.

| | | | |
|---|---|---|---|
| Total price of lands sold to | C. A. Gaudet | ..... | $3,125.00 |
| " | V. Mauberret | ..... | $190.00 |
| " | W. J. Brodie | ..... | $65.00 |
| | | | $3,380.00 |

Block No. 6 was not offered for sale, being withdrawn by order of Court, of date 27th February, 1892.

The receiver with respect submits to the Court this report of sales made by him in compliance with the above recited orders.

Very respectfully,

(Signed) J. W. GURLEY,
*Receiver, etc.*

29th February, 1892.

*Motion to File Report of Receiver of Sales of Land.*

Entered and Filed March 3rd, 1892.

No. 12008.

JAMES W. PEAKE

vs.

THE CITY OF NEW ORLEANS.

On motion of R. De Gray and Chas. Loque, solicitors for complainant, and on presenting the report of J. W. Gurley, receiver, of the sales made by him on the 27th February, 1892, under the order of sale of January, 1892, of lands transferred to him as receiver, under orders of Court of 13th June, and 5th and 13th of December, 1891, by the defendant, the city of New Orleans;

It is ordered that the same be filed and noted of record; and further, if no opposition to the confirmation of said report — sales be made within eight days from the date of filing said report, that the same be and stand confirmed, and that the receiver proceed to give title to the purchasers.

(Signed) EDWARD C. BILLINGS,
*Judge.*

March 3, 1892.

61 *Sale of Lands, City of New Orleans, as Trustee of the Drainage Fund, to Dr. C. A. Gaudet, Marked D 4.*

Offered by Defendants and Filed March 12, 1910.

*Sale of Lands, City of New Orleans, as Trustees of the Drainage Fund, to Dr. C. A. Gaudet.*

UNITED STATES OF AMERICA:

Sale, City of New Orleans, as Trustees of the Drainage Fund, to Dr. C. A. Gaudet.

STATE OF LOUISIANA,
*Parish of Orleans,*
*City of New Orleans:*

Be it known, that on this 20th day of the month of February, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth, before me, W. Morgan Gurley, a notary public, duly commissioned and sworn, in and for this City and the Parish of Orleans, therein residing and in the presence of the witnesses hereinafter named and undersigned personally came and ap-

peared J. W. Gurley, herein acting as receiver appointed by the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, holding sessions at the City of New Orleans on the 13th day of June, A. D. 1891, in the case of James W. Peake vs. The City of New Orleans, in Equity, No. 12008, of the Docket of said Court, who in his said capacity of receiver, declares: That, whereas, at a public auction sale made by him on the 27th day of February, 1892, under and in conformity to an order of the said Court of date 15th day of January, 1892, and the published advertisements annexed as part of this act; Dr.
62 C. A. Gaudet having been the highest and last bidder for the several properties as advertised, hereinafter described, the same conformably to said bids, were adjudicated to him for the prices and sums hereinafter mentioned.

Now, therefore, he, the said J. Ward Gurley, as receiver as aforesaid, does by these presents and conformably to the decrees of the said Circuit Court of 21st of March, and 11th of April, 1892, and to the decree of the Circuit Court of Appeals for the 5th Circuit conforming the decree of the said Circuit Court of 23rd June, 1892, grant, bargain, sell, convey, transfer, assign, set over and deliver with full substitution and subrogation in and to all the rights and actions of warranty which he, as receiver, has or may have against all preceding owners and vendors under the said act of transfer to him by the said city and none other, all the right and title of the City of New Orleans, as trustees of the Drainage Fund, and which he, as receiver, derived from the City of New Orleans by and in virtue of the transfer made to him by the said city through the mayor thereof, by the act before Joseph D. Taylor, notary, on the 11th day of January, 1892, as per said act before said Taylor on the 11th day of January, 1892, and more especially all such right as the said city derives from the commissioners of the First and Second Drainage Districts of the Parish (Parishes) of Orleans and Jefferson under *Oct.* No. 30 of the year 1871, of the Legislature of Louisiana in and to the following described property advertised as Nos. 1, 2, 3, 4, 5, & 7:

First. The tract of land beginning at a point on the Bayou St. John on the south line of the lands belonging to the Milne Asylum of *the* Destitute Orphan Girls, thence on the Bayou St. John, five hundred and seventy-five (575) feet, six (6) inches, more or less, thence between parallel lines to Milne Street measuring on said street, five hundred and seventy-five (575) feet, more or less, bounded as follows, to-wit: On the north side by the lands of the Milne Asylum of the Destitute Orphan Girls, on the west by Milne Street, on the south by the lands of M. Moran, on the east by the Bayou St. John; the whole as per plan of J. A. D'Hemecourt, surveyor, dated 30th December, 1860, and deposited in office of said Board of Commissioners, which said tract of land being the following described lots in the following squares as per books of plans by J. A. D'Hemecourt, surveyor, dated January 2nd, 1861, and deposited in the office of the Board of Commissioners of the 1st Drainage District, and now in the City Hall.

First. The greater portion of twenty-three (23) squares of ground Nos. 965, 966, 967, 968, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986 and 987, designated in each square as Lot No. 2 and having each a front on Gaines Street, and each a depth toward Harney Street of two hundred and thirty (230) feet, eight (8) inches and seven lines (7).

Second. The greater portion of eleven (11) squares of ground Nos. 965, 966, 967, 968, 970, 971, 972, 973, 974, 975, 976, 977, 978, designated in each square as Lot #1, and having each a front on Gaines Street, and each a depth of two hundred and eighty-
63 four (284) feet, nine inches (9), and two (2) lines toward Polk Avenue.

Third. The greater portion of twelve (12) squares of ground Nos. 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014 designated in each square as Lot #2, and having each a front on Gaines Street, and each a depth of two hundred and eighty-four (284) feet, nine (9) inches and two (2) lines toward Polk Avenue, adjudicated to Dr. C. A. Gaudet for $105.00.

Second. Milne Asylum for Destitute Orphan Girls by notarial act before Hugh Madden, notary public, dated Sept. 18th, 1863, Mrs. E. Buisson, president of the Milne Asylum for Destitute Orphan Girls, sells unto the Board of Commissioners 1st Drainage District, represented by Geo. Ingraham certain squares and parts of squares of ground according to a plant by Wrotnoski, surveyor, being in the rear of the City of New Orleans, as follows, to-wit:

First. Certain portion of each of twenty-three (23) squares of ground which are designated by the Nos. 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, which portion of each of twenty-three (23) squares of ground being taken from the north side of each said squares fronting on Polk Street and measuring Seven (7) feet, two (2) inches and two (2) lines on the Bayou St. John, the same fronting on Milne Street and between parallel lines through each said squares from said Bayou to Milne Street.

Second. The north half of certain other squares of ground designated on said plan Nos. 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088 and 1089. The said half of said square 1067 fronting one hundred and forty-eight (148) feet, more or less, on the Bayou St. John, and thence along the southern boundary of all of said half squares between parallel lines to Milne Street, upon which said half square #1089 fronts (146) one hundred and forty-six feet, more or less, and all of which half squares are bounded on the north side by Fremont Street.

Third. Forty-six (46) certain squares of ground next to the above described half squares of the north side, and which are designated on said plan by the Nos. 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, and 1116, and 1119, 1120.

1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140 and 1141, which said squares 1116 and 1119 have each two hundred and ninety-six (296) feet, more or less, and thence running west between said parallel lines to Milne Street, upon which said Squares 1094 and 1141, front, each two hundred and ninety-two (292) feet, more or less, and they are bounded between said parallel lines by Harrison Avenue on the north and Fremont Street on the south.

Fourth. Parts of Squares Nos. 1147, 1148, 1149, 1150, 1151 1152 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163 1164, 1165, 1166, 1167 and 1168, the same being composed of fifty (50) feet, nine (9) inches and two (2) lines taken from the
64 southern front of Harrison Avenue of each of said squares, and running between parallel lines from the Bayou St. John to Milne Street upon each of which is a front of fifty (50) feet, nine (9) inches, and two (2) lines, all according to said plan of said Wratnoski, which said above tract of land embraces the following square- as per books of plans made by J. A. D'Hemecourt, surveyor, dated January 2nd, 1861, then deposited in the office of the Board of Commissioners of the First Drainage District and now in the Comptroller's office in the City Hall of this city.

First. The small portion of Squares Nos. 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001 and 1002, designated in each of said Squares as Lot No. 2, and all fronting on Polk Street, and seven (7) feet, two (2) inches and six (6) lines in depth toward Gaines Street.

Second. The smaller portions of Squares Nos. 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, and 1014, are designated in each square as Lot No. 1, all fronting on Polk Street, and measuring six (6) feet, nine (9) inches and two (2) lines in depth towards Gaines Street.

Third. The smaller portion of Squares Nos. 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167 and 1168, designated in each square as Lot. No. 2, all fronting on Harrison Avenue and measuring each fifty (50) feet, nine (9) inches and two (2) lines in depth towards Lane Street.

Fourth. The entire forty-six (46) Squares Nos. 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140 and 1141, which said above described whole squares of ground are embraced within the Bayou St. John, Milne Street, Harrison Ave. and Gaines Street, adjudicated to Dr. C. A. Gaudet for six hundred and twenty ($620.00) dollars.

Third. Certain portions of each of twenty-three (23) certain squares of ground designated by the Nos. 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161,

1162, 1163, 1164, 1165, 1166, 1167, and 1168, as per plan of the same and other property made by A. F. Wrotnoski, surveyor and civil engineer, dated July 1st, 1863, and deposited in the office of Hugh Madden, said square running east and west from Nilne (Milne) Street on the west to Bayou St. John on the east, and said part thereon herein conveyed being two hundred and forty-one (241) feet, two (2) inches and six (6) lines of each of said squares commencing at a point fifty (50) feet, nine (9) inches and two (2) lines from the southern boundary of said squares fronting on Harrison Avenue, and running north towards Lane Street on which they front.

Second. Forty-six (46) certain squares next to above designated in said plan by the Nos. 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189 and 1190, and 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213 1214, 1215, 1216, 1217, and 1218, and comprised within parallel lines running from the Bayou St. John on the east to Milne Street on the west, Twiggs Street on the north and Lane Street on the south.

Third. A certain small strip of land being six (6) feet, nine (9) inches and two (2) lines taken off the southern front of each of twenty-three (23) separate squares of ground designated on said plan by the Nos. 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317 and 1318, which front on Downs Street and running between parallel lines from Milne Street on the west where it fronts six (6) feet, nine (9) inches and two (2) lines through each of said squares to the Bayou St. John, upon which it has the same front. Which said above tract of land embraces the following squares and lots in squares as per books and plans made by J. A. D'Hemecourt, surveyor, dated January 2nd, 1861, then deposited in the office of the Board of Commissioners of the 1st Drainage District, and now in the Comptroller's Office in the City Hall of this city.

First. The greater portion of Squares Nos. 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, and 1168, designated in each square as Lot. No. 1, all fronting on Lane Street and having each two hundred and forty-one (241) feet, two (2) inches and six (6) lines in depth toward Harrison Avenue.

Second. The smaller portion of Squares Nos. 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317 and 1318, designated in each square as Lot No. 2, fronting each on Downs Street and having each a depth of six (6) feet, nine (9) inches and two (2) lines towards Mouton Street.

Third. The entire forty-eight (48) Squares Nos. 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182,

1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, (1191, 1192, 1193, 1194, 1195, 1196), 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217 and 1218 all of above said squares are embraced between the Bayou St. John and Milne Street, adjudicated to Dr. C. A. Gaudet for one thousand ($1000.00) dollars.

Fourth. A tract of land beginning at the north line corner of the Bayou St. John of the lands belonging to the Milne Asylum for Destitute Orphan Boys and having twelve (12) arpents on Bayou St. John, more or less, thereon between parallel lines to Milne Street, bounded as follows: On the north by the lands of the Society for the Relief of Destitute Orphan Boys, on the west by Milne Street, on the south by lands of Milne Asylum for Destitute Orphan Boys and on the east by the Bayou St. John. The whole as per plans of J. A. D'Hemecourt, surveyor, dated 30 December, 1860, and deposited in the office of said Board of Commissioners, which
66 said tract of land embraces entire squares and portion of squares as described in book of plans made by J. A. D'Hemecourt, surveyor, dated January 2nd, 1861, then deposited in the office of said Board of Commissioners of the 1st Drainage District and now in the Comptroller's Office in this city as follows, to-wit:

First. The greater portion of Squares Nos. 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317 and 1318, designated in each square as Lot No. 1, all fronting on Mouton Street from the Bayou St. John to Milne Street, and having each a depth of two hundred and eighty-five (285) feet, two (2) inches and six (6) lines towards Downs Street.

Second. The entire Squares Nos. 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, (1341, 1342, 1343, 1344, 1345, 1346), 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, (1391, 1392, 1393, 1394, 1395, 1396), 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439 and 1440, all the above said squares are embraced between the Bayou St. John, Milne, Mouton and Butler Streets, adjudicated to Dr. C. A. Gaudet for four hundred ($400.00) dollars.

Fifth. A tract of land beginning at the north line corner of the Bayou St. John of the lands belonging to the Female Orphan Society, and having twelve (12) arpents, more or less, on Bayou St. John, thence in a line along May to Milne Street, measuring forty-five (45) arpents, eighty (80) feet more or less, thence south along Milne Street, nine arpents, one hundred forty-two (142) feet, more

or less, thence on a line to Bayou St. John, measuring forty-five arpents, ninety-six feet, more or less, bounded on the north by the lands of the late J. B. Genois, on the west by Milne Street, on the south by lands of the Female Society and on the east by the Bayou St. John, as per plan of J. A. D'Hemecourt, surveyor, dated December 30th, 1860, deposited in the office of the Commissioners of the 1st Drainage District, which said above tract of land embraces entire squares and portions of squares as described in book of plans made by J. A. D'Hemecourt, surveyor, dated January 2nd, 1861, then deposited in the office of the Board of Commissioners, 1st Drainage District and now in the City Hall of this city, as follows, to-wit:

First. The entire squares of ground Nos. 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, (1491, 1492, 1493, 1494, 1495, 1496), 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, (1541, 1542, 1543), 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, (1566), 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576, all of the above squares are embraced between the Bayou St. John, Milne, May and Butler Streets.

67

Second. Lot No. 1 in Square 1565, measuring two hundred and seventeen (217) feet on Esplanade Street, two hundred and seventy-eight (278) feet on Houston Street, three hundred forty-nine (349) feet, four (4) inches and six (6) lines on the near line parallel to Cass Street, and two hundred twenty-four (224) feet in depth on an oblique line parallel to Alemo Road or the Bayou St. John, adjudicated to Dr. C. A. Gaudet for five hundred ($500.00) dollars.

Seventh. A tract of land beginning at 4th Street running back obliquely through the division of squares at an angle of about seven (7) degrees to the north, twenty (20) arpents, more or less, along said line to Tenth Street, thence toward the lake, thence on the lake to Fourth Street bounded as follows: On the north by Lake Pontchartrain, on the west by Tenth Street, on the south by lands of Genois and on the east by Fourth Street, adjoining the property, late of Laurent Millaudon, all as per plan by J. A. D'Hemecourt, surveyor, dated December 30th, 1860, and deposited in the office of the Board of Commissioners of the 1st Drainage District, which said above tract of land embraces the following entires squares and portions of squares, as per book of plans made by J. S. D'Hemecourt, surveyor, dated January 2nd, 1861, and deposited in the office of the Board of Commissioners of the 1st Drainage District, and now in the Comptroller's Office of this city, viz: Entire squares of ground

Nos. 1611, 1612, 1613, 1614 and 1615—comprised within Fourth Street, Ninth Street, Lake Pontchartrain and Fish Street.

Second. Lot 2 in Square No. 1598, fronting on Fish Street and measuring two hundred twenty-eight (228) feet, two (2) inches and six (6) lines by thirty-four (34) feet, two (2) inches and five (5) lines in depth and front on Eight Street. Lot No. 2 being about one-quarter (¼) of square 1599, fronting on Fish Street, Lot. No. 2 being about two-fifths (2/5) of square 1600, fronting on Fish Street, Lot No. 2 being about one-half (½) of Square No. 1601, fronting on Fish Street, Lot 2 being about (2/3) two-thirds of Square 1602, fronting on Fish Street.

Third. Nearly the whole of Square No. 1616 designated by Lot No. 1, fronting on Lake Pontchartrain between Ninth and Tenth Streets and on Fish Street, adjudicated to Dr. C. A. Gaudet for three hundred and fifty ($350.00) dollars.

And now the said Dr. C. A. Gaudet here present accepting and purchasing for himself and acknowledging due delivery and
68 possession thereof all of the above described property unto said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the several prices and sums before mentioned, which aggregate two thousand, nine hundred and seventy-five ($2,975.00) dollars, said amount being paid as follows: viz.: Ten per cent (10%) of the amount of each of the foregoing adjudications aggregating two hundred ninety-seven 50/100 ($297.50) dollars, were severally paid by said purchaser at the time of the said adjudication to the said receiver, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor. And for the balance of the said various adjudications or prices aggregating the sum of two thousand six hundred seventy-seven & 50/100 ($2,677.50) dollars, were severally paid by the said purchaser to the said receiver at the signing of these presents, who hereby acknowledges receipt thereof and grants full acquittance and discharge therefor.

The said purchaser herein assumes the payment of all taxes which may be due on said property in conformity with the above mentioned orders of Court, and I, said notary, am relieved from producing the tax certificates on said property by the parties to this Act, they acknowledging said order of Court to be sufficient, and relieve me of all responsibility and liability in the premises.

By reference to the certificates of the Register of Conveyances and Recorder of Mortgages in and for this parish, annexed hereunto and of even date herewith, it does not appear that said property has been heretofore alienated by the City of New Orleans or the Board of Drainage Commissioners, or that it is subject to any encumbrance whatsoever.

This done and passed in my notarial office in the City of New Orleans, Louisiana, on the day, month and year herein first above written, in the *prence* (presence) of Louis Lion and Frank L. Richardson, competent, male witnesses here residing who hereunto sign

their names, together with said appearers and me, notary, after reading the whole.

(Signed) J. W. GURLEY,
*Receiver.*
" C. A. GAUDET,
" W. MORGAN GURLEY,
*Not. Pub.*

Witnesses:
(Signed) LOUIS LION.
" F. L. RICHARDSON.

Registered, Feb. 20/93/ B., 148, Fo. 93.

A true copy.
(Signed) W. MORGAN GURLEY,
[SEAL.] *Not. Pub.*

O. K.
J. E. H.

69 & 70 *Decree Confirming Sale.*

Extract from the Minutes, November Term, 1891.

NEW ORLEANS, April 11, 1892.

Court met pursuant to adjournment;
Present: Hon. Edward C. Billings, District Judge.

No. 12008.

J. W. PEAKE

vs.

CITY OF NEW ORLEANS.

Decree on Oppositions of the City of New Orleans to the Sale of the 27th of February, 1892.

This cause came on to be heard at this term on the opposition of the city of New Orleans, to the confirmation of the sale by the receiver herein, on the 27th of February, 1892, and was argued by the solicitors for the parties, respectively, and submitted.

Whereupon, and on consideration thereof, it is ordered, adjudged and decreed as follows: That the sales made by the receiver to Dr. C. A. Gaudet, V. Mauberret and W. J. Brodie of the 27th day of February, 1892, except the sale of the square of ground bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) Streets, on which the Dublin street draining machine is erected, and of the said draining machine, be now confirmed, on condition that the

purchasers shall assume the payment of taxes, if any there be, which may be due thereon.

It is further ordered that the other liens, privileges and encumbrances be erased and cancelled and transferred to the proceeds of sale.

New Orleans, April 11, 1892.

(Sig.) EDWARD C. BILLINGS,
*Judge.*

71 *Mandate.*

Filed July 1st, 1892.

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America to the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Louisiana, Greeting:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Louisiana before you, or some of you, in a cause between James W. Peake, Complainant, and The City of New Orleans, Respondent, No. 12,008, wherein the decree of said Circuit Court rendered on the 11th day of April, 1892, is as follows:

"Decree on Oppositions of the City of New Orleans to the Sale of the 27th of February, 1892.

This cause came on to be heard at this term on the opposition of the City of New Orleans, to the confirmation of the sale made by the receiver herein, on the 27th of February, 1892, and was argued by the solicitors for the parties, respectively, and submitted.

Whereupon, and on consideration thereof, it is ordered, adjudged and decreed as follows: That the sales made by the receiver to Dr. C. A. Gaudet, V. Mauberret and W. J. Brodie on the 27th day of February, 1892, except the sale of the square of ground bounded by Fourteenth, Madison, Colapissa and Adams (now Dublin) streets, on which the Dublin street draining machine is erected, and of the said drainage machine, be now confirmed, on condition that the purchasers shall assume the payment of taxes, if any there be, which may be due thereon.

It is further ordered that the other liens, privileges and encumbrances be erased and cancelled and transferred to the proceeds of sale,"

72 as by the inspection of the transcript of record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by the City of New Orleans, agreeably to the act of Congress, in such case made and proveded, fully and at large appears.

And whereas, in the present term of November in the year of our Lord one thousand eight hundred and ninety-one, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of said Circuit Court in this cause, be, and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellant The City of New Orleans, and John Fitzpatrick, surety on the appeal bond herein, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court, amounting to the sum of Forty-eight dollars and twenty-cents.

June, 23, 1892.

73 You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29 day of June, in the year of our Lord one thousand eight hundred and ninety —.

(Signed) JAMES M. McKEE,
*Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.*

74 *Petition of Leader Realty Company, Ltd.*

Filed December 8th, 1909.

Civil District Court for the Parish of Orleans.

Petition Filed December 8th, 1909.

Civil District Court, Division B.

No. 91799.

LEADER REALTY CO., LTD.,

vs.

LAKEVIEW LAND COMPANY.

To the Honorable the Civil District Court in and for the Parish of Orleans:

The petition of the Realty Leader Company, Limited, a corporation created under the laws of Louisiana and domiciled in this City, with respect, shows:

That petitioner is the owner and as such entitled to the possession

of the following described property situated in the City of New Orleans, La., to-wit:

Lots 1, 6 and 7 of Section 8; and lots 1, 6, 7 and 12 of Section 17, in T. 12, S. R. 11 E. in S. E. District, E. of the River according to the official plat of survey of said lands in the State Land office and the Commission of the United States Land Office, comprising 321.42 acres.

That petitioner acquired said property from Dr. Andrew W. Smythe by act of sale under private signature, duly acknowleged and authenticated before and by Emmanuel L. Weil, Notary Public, on May 1, 1907, and registered in the Conveyance Office in Book 220, Folios 343 to 345.

That said property was purchased from the State of Louisiana by said Dr. A. W. Smythe by Patent No. 1890, registered in Book of Patents volume 18, page 11, on June 3, 1874.

75 That the Lakeview Land Company, a corperation created under the laws of Louisiana and domiciled in this City is wrongfully in possession of petitioner's said land.

That the value of said land is more than $2,000.00.

Wherefore, petitioner prays that the Lakeview Land Company may be cited to answer this demand, and after due legal proceedings had, that there may be judgment in favor of plaintiff over and against defendant recognizing plaintiff as the sole owner in perfect ownership of said land and as such *sending* it into possession thereof.

And for all costs and general relief.

(Signed) GUSTAVE LEMLE,
" JOHNSTON ARMSTRONG,
*Attorneys.*

76 *Answer of the New Orleans Land Co. & al.*

Filed November 19th, 1913.

Civil District Court, Division "D."

No. 91800.

LEADER REALTY CO.

vs.

NEW ORLEANS LAND CO. & AL.

To the Honorable the Civil District Court for the Parish of Orleans:

Into Court comes the New Orleans Land Company, through A. C. Wuerpel, President and Lakeview Land Company, through William J Castell, President who for answer to the petition herein, reserving their rights under the exceptions filed and partially overruled by the Supreme Court deny all and singular alleations contained in said petition; the defendants deny that the plaintiffs ever had a valid title to the land claimed by them under a patent issued by the

State of Louisiana and deny that the State could give any title to said land;

Further answering, Respondent- avers that all of said lands were the property of Alexander Milne, acquired by him through mesne conveyances from and through the French government by complete grants which needed no confirmation, and that the other grants were duly confirmed by the Government of the United States: that the acquisitions were made prior to 1803, and under the treaty between France and the United States; that the holdings of the original owners by grants, whether complete or inchoate were protected by said treaty of 1803, and cannot at this late date be treated as an absolute nullity nor in any way attacked;

That the defendant acquired from Dr. C. A. Gaudet, by an act before James Fahey, Not. Pub. February 16th, 1893, and by a title translative of property, for a valuable consideration, and the title was duly registered in the Conveyance Office, of this parish in Book 148 fo. 89; that Dr. Gaudet acquired from the Receiver of the Drainage Taxes, of February 20th, 1893, by act before W. Morgan Gurley, Not. Pub. duly registered in the Conveyance Office of this parish, Book 148, fo. 93; which sale was made by virtue of
77 proceedings had in the Circuit Court of the United States, for the Eastern District of Louisiana, under No. 12,008, of said Court, in the matter of James W. Peake vs. City of New Orleans, which sale was duly confirmed by said Court and subsequently affirmed by the Circuit Court of Appeals for the Fifth circuit, under No. 46 of said Court, reported in 52 Federal Reporter, page 74;

That said proceedings in Equity before the Circuit Court of the United States, effectually protected the interest of these respondents from any attack and especially where the lapse of ten years *have* rendered said proceedings conclusive and beyond power of attack, which prescription is now especially pleaded.

That full faith and credit must be given to the judicial proceedings above mentioned by the Courts of this State, under the Constitution of the United States, and the same cannot in anywise be attacked in these proceedings;

That J. Ward Gurley, the Receiver of the Drainage, duly appointed as such by the Circuit Court of the United States for the Eastern District of Louisiana, acquired said property from the City of New Orleans, by transfer and assignment on January 1st, 1892, before Jos. D. Taylor, Not. Pub. under orders of said Court of the 13th of June, 1891, and the 5th and the 13th of December, 1891, in suit No. 12,008 of said Circuit Court of the United States for the Eastern District of Louisiana;

That the City of New Orleans acquired said property from the Commissioners of the First Drainage District by act of the Legislature No. 30 of 1871, Section 9;

That said act was passed for the purpose of carrying into effect the drainage of swamp lands donated over by the United States to the State of Louisiana under the Swamp Lands grants of Congress of 1849 and 1850;

That the Commissioners of the First Drainage District acquired said property at Sheriff's sale for drainage taxes, on the 19, 20th,

21st of July, 1863, and October 10th, 1863, March 12th, 19, 1863,
under proceedings No. 17,028 of the late Third District
78 Court of New Orleans, transferred to the Civil District
Court, under No. 92,640;

That said property was assessed to the four Asylums who were the legatees of Alexander Milne; and said sales and the acquisitions by the New Orleans Land Company *was* duly ratified by all of said four asylums so that the titles acquired by the New Orleans Land Co. is not subject to attack by any of said asylums, nor by any third person nor by State nor by her transferees;

That the four asylums partitioned all of said lands between themselves by act before Achille Chiapella, Not. Pub. on the 29th of August, 1845, duly registered in the Conveyance office Book 53 fos. 501 to 505.

Respondent avers that on the 4th of April, 1903, the Milne Asylum for Destitute Boys and Girls, transferred a part of the property to the New Orleans Land Company as a tract by warranty deed, executed before W. Morgan Gurley, Not. Pub. and duly recorded in the Conveyance Office, Book 189, fo. 272 and Book 192, fo. 257.

The female Orphan Society (Poydras Asylum) ratified the purchase of the New Orleans Swamp Land Reclamation Company, which is now the New Orleans Land Company, by act before James Fahey, Not. Pub. on the 7th day of July, 1893; (lot B).

The Society for the Relief of Destitute Orphan Boys also ratified the title, so acquired by the New Orleans Swamp Land Reclamation Company, by act before James Fahey, Not. Pub. on the 10th day of July, 1893; (Lot A).

That the tracts of land "C" and "D" acquired by the Milne Asylum for Destitute Orphan Girls ratified the Tax sale to J. B. Maylie, and the sale by Maylie to the New Orleans Land Company and declared that said Asylum had no title to the other property acquired by the New Orleans Swamp Land Reclamation Company, all by act before J. C. Davey, Not. Pub. February 28th, 1905, and on the same day before the same Notary, the Milne Asylum for destitute Orphan Boys ratified the same sales;

That the four Milne Asylums acquired from Alexander Milne
under his will duly probated and carried into execution, and
79 they partitioned the property so bequeathed to them by Act
before Achille Chiapella, Not. Pub. on the 29th of August,
1845, which act was duly registered in the Conveyance Office of this Parish, in Book 53, folios 501, 503, 504 and 505;

That the titles of Alexander Milne which were duly ratified by the Government of the United States, covered the whole tract from the Alpuente Tract to the Genois Tract near Lake Pontchartrain as will be shown on the trial of this case;

That your respondent, the New Orleans Land Company, purchased said poperty when the same was a swamp and unhabitable; that they have dug drainage canals, built shell roads, drained the same, paid State and City taxes thereon since their purchase, February 16th, 1893, and have rendered same habitable, and have spent on the whole tract, included between Taylor Ave. Lake Pontchartain Milne Street, and Bayou St. John, the sum of Three Hundred

and Eighty Thousand Dollars, ($380,000.00) of which the property claimed herein is chargeable with its pro rata;

That respondent was in perfect good faith when they acquired said property and should recover the value of the improvements and taxes paid thereon;

Wherefore, respondent prays that judgment be rendered in their favor and that plaintiff's suit be dismissed with costs, and in case plaintiff should recover any part of the property sued for, and that before they are placed in possession, they should be condemned to pay to respondent the costs of the above mentioned improvements placed on said property and all the taxes paid thereon by respondent since 1893, and respondent further prays for all general and equitable relief as may seem meet and proper and respondent prays for costs.

(Signed) CHAS. LOUQUE,
W. O. HART,
CHAS. J. THEARD,
*Att'ys.*

A. C. Wuerpel, President of the New Orleans Land Company and William J. Castell, President of the Lakeview Land Company, being duly sworn say that all the facts and allegations of the foregoing answer are true and correct.

(Signed) A. C. WUERPEL,
WM. J. CASTELL.

80 Sworn to and subscribed before me on the 17th day of November, 1913.

(Signed) GUS. A. LLAMBIAS,
[SEAL] *Not. Pub.*

81 *Judgment of the Civil District Court in the Matter of Leader Realty Company vs. Lakeview Land Company and New Orleans Land Company.*

Civil District Court, Parish of Orleans, Division "D."

No. 91799 and No. 91800.

LEADER REALTY CO., LTD.,

vs.

LAKEVIEW LAND COMPANY & NEW ORLEANS LAND COMPANY.

Judgment.

In this cause submitted to the court for adjudication, the law and the evidence being in favor thereof, and for the reasons orally assigned:

It is ordered, adjudged and decreed that there be judgment herein in favor of plaintiff (Leader Realty Company, Limited), over and against defendants (New Orleans Land Company and the Lakeview

Land Company), recognizing plaintiff as the owner in perfect ownership, and as such entitled to the possession of the following described property to wit:

All of the land situated in Lots 1, 6 and 7 of Section 8; Lots 1, 6, 7 and 12 of Section 17, Township 12, South of Range 11 East, Southeastern District of Louisiana, East of the River, according to the official plat of survey of said land in the State Land Office and the Land Office of the United States at Washington, D. C., all situated in the City of New Orleans, Louisiana, lying South of a line parallel to and 6 feet, 9 inches and 2 lines North of Downs Street, as delineated on the D'Hemecourt map of the City of New Orleans, commonly known as the official map of said City of New Orleans, except the following squares of ground, as delineated on said D'Hemecourt map of the City of New Orleans, of which defendants are recognized to be the owners, to-wit: 1032, 1033, 1034, 1035, 1036, 1045, 1046, 1047, 1048, 1049, 1237, 1238, 1239, 1240, 1247, 1248, 1249, 1250, 1288, 1289, 1290.

It is further ordered, adjudged and decreed that the streets as delineated on said D'Hemecourt plan, separating and bounding said hereinbefore described squares belong to and are the prop-
82 erty in perfect ownership of the plaintiff.

It is further ordered, adjudged and decreed that the reconventional demand of defendants be and the same is hereby dismissed as in case of non-suit and without prejudice to defendants' rights.

Judgment rendered and read in open Court, May 14th, 1914.
Judgment signed in open Court, June 24th, 1914.

(Signed) PORTER PARKER,
*Judge.*

83 *Opinion of the Court and Judgment in re Leader Realty Co. vs. Lakeview Land Co. and New Orleans Land Company.*

UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

NEW ORLEANS, Saturday, June 30, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice; Oliver O. Provosty, Walter B. Sommersville, Charles A. O'Neill, Paul Leche, Associate Justices.

His Honor, Mr. Justice O'Neill, Pronounced the opinion and Judgment of the Court in the following case:

No. 20818.

LEADER REALTY COMPANY

v.

LAKEVIEW LAND COMPANY,

and

LEADER REALTY COMPANY

v.

NEW ORLEANS LAND COMPANY.

Appeal from the Civil District Court for the Parish of Orleans—Porter Parker, Judge.

Mr. Justice O'NEILL:

This is a petitory action, in which the plaintiff claimed title to Lots 1, 6 and 7 of Section 8 and Lots 1, 6, 7 and 12 of Section 17, in T. 12 S. R. 11 E. in the Southeastern District of Louisiana, east of the Mississippi River. The seven lots form a compact tract or continuous strip of land extending from Lake Pontchartrain due south, in the order in which the numbers of the lots are given, and comprise the fractional east half of east half of the two sections. The land is bounded on the east in part by the rear boundary lines of two grants made to Alexander Milne, designated as O. B. 17 and O. B. 164, (which grants extend in a westerly direction 40 arpents back from Bayou St. John); and the land sued for is
84 bounded on the east also in part by the Sixteenth Section lying immediately south of the Milne Grant O. B. 164.

Without otherwise putting their titles at issue, the defendants first filed a plea of prescription of ten years as to all of the land claimed by the plaintiff, and a plea of prescription of three years as to a certain tracts of land which one of the defendants had bought on the 15th of July, 1904, from Bernard Maylie, who had acquired it by virtue of a tax sale dated the 9th of August, 1899. The tax deed on which the plea of prescription of three years is founded contains two separate descriptions. One purports to describe a tract of land bounded on the north by Downs Street and south by Twiggs Street, extending east and west across Lot 1 of Section 17, but also says "designated as square No. 1219 et als."

The other description is of a tract bounded on the north by French Street (running east and west across the southern part of Lot 7 of Section 17), and on the south by Polk Avenue (running east and west across the northern part of Lot 12), but it also says "designated as squares Nos. 1015 and als." This twofold method of description in the tax deed, describing the land first as only two separate tracts, bounded by the streets named, and then saying,

"designated as squares Nos." etc. gave rise to the question whether the tax deed conveyed only the squares themselves or also the streets separating the squares; because the land embraced in that sued for, lying between Downs Street and Twiggs Street, includes five separate whole squares and parts of six other separate squares, and the streets separating the eleven squares; and the land sued for, lying between French Street and Polk Avenue, embraces six whole squares and parts of four other squares, and the streets separating the eight squares.

The pleas of prescription were tried by a jury and a verdict was rendered in favor of the defendants maintaining both pleas. Judgment was rendered accordingly, rejecting the plaintiff's demand. On appeal, the judgment was amended as follows: The prescription of ten years was overruled as to the land south of a certain
85 line running parallel with, and 6 feet, 9 inches and 2 lines north, from Downs Street. The plea of prescription was maintained and the plaintiff's claim rejected as to all of the land lying above that line, thus eliminating from the contest Lots 1 and 6 of Section 8, and all of Lots 7 in that section except a narrow triangular part in the southwest corner, extending below the line and into Downs Street. The prescription of three years was maintained as to the land described in the tax deed to Bernard Maylie and in the deed from him to the defendant; but it was held that the tax title embraced only the squares themselves, and not the streets separating the squares, lying between the east and west boundaries of the land in contest and between Downs Street and Twiggs Street and between French street and Polk Avenue. The prescription of three years, therefore, in so far as it was maintained, has eliminated from the contest eleven tracts of land in Lot 1 of Section 8, being all of the 5 squares numbered respectively 1238, 1239, 1248, 1249 and 1289, the eastern portion of the 3 squares numbered respectively 1290, 1247 and 1240, and the western portion of the 3 squares numbered respectively 1237, 1250 and 1288; and it has eliminated also ten separate tracts lying partly in the southern portion of Lot 7 and partly in the northern portion of Lot 12 of Section 17, being all of the 6 squares numbered respectively 1033, 1034, 1035, 1046, 1047 and 1048, the eastern part of the 2 squares numbered respectively 1045 and 1036, and the western part of the 2 squares numbered respectively 1032 and 1049. In the original decree of this court, the case was remanded to the district court for judgment to be framed so as to recognize the plaintiff's title to all of the land sued for except the tracts on which the pleas of prescription were maintained. But, on application for rehearing, the decree was set aside in so far as the court had passed upon the question of title of the lands on which the pleas of prescription were overruled; and the case was then remanded for trial of the question of title to the lands that were not eliminated from the contest by prescription. See Leader Realty Co. v. Lakeview Land Co, et al. 133 La. 646, 63 South 253.
86 When the mandate was filed and the case reinstated on the docket of the district court, judgment was entered on the pleas of prescription, in accord with the decree of this court.

The defendants then answered, tracing their title back to Alexander Milne and Don Carlos Tarascon, and claiming that all of the land remaining in contest was embraced in certain grants made to them by the French or Spanish Government and approved by the United States Government. They alleged that the land was an uninhabitable swamp when they bought it; that they had spent $380,000.00 in draining and improving the property, digging canals and building shell roads; and had paid taxes on it every year since the date of their purchase, that is, since the 16th of February, 1893. They prayed that the plaintiff's demand be rejected, and, in the alternative that, as possessors in good faith, they should be reimbursed for the improvements made and for taxes paid on the property, if the plaintiff should have judgment for any part of the land.

Judgment was rendered in favor of the plaintiff for all of the land remaining in contest, that is for all of the land sued for except that to which the defendant's title had been confirmed by the pleas of prescription of ten and three years, already maintained. The defendants' alternative demand for reimbursement was dismissed as of non-suit, without prejudice to their rights to a separate action thereon. The defendants prosecute this appeal; and the plaintiff, answering the appeal, prays that the judgment be amended so as to reject the defendants' demand for a reimbursement absolutely. The defendants have also filed in this court a plea of prescription of thirty years. One of the defendants, New Orleans Land Company, also filed an assessment of errors, alleging that its title was acquired from and by the exercise of the jurisdiction vested by the laws of the United States in the Circuit Court of the United States for the Eastern District of Louisiana, in a suit entitled Peake v. City of New Orleans, and that the title so acquired could not be disregarded; and that a certain judgment rendered by the Circuit Court of the United States, in a suit entitled Smythe v. New Orleans Land Com-
87 pany, was evidence juris et de jure, that the defendant was in possession of a part of the property claimed in this suit; and that, under the doctrine that possession of a part of a tract of land is possession of the whole, the pleas of prescription of ten years and three years should be maintained as to the whole tract. Thereupon, the plaintiff, appellee, filed a motion to have the appellants' assignment of errors rejected and stricken from the record, on the ground that it was not filed within the time allowed by law, as prescribed by Article 897 of the Code of Practice. The latter motion was ordered deferred to be considered with the merits.

*Opinion.*

The appellants' assignment of errors was filed more than a year after the record in the present appeal was brought up. Article 897 of the Code of Practice provided that an appellant who does not rely wholly or in part, for maintaining his appeal, upon a statement of facts, or an exception to a ruling of the trial judge, or a special verdict, but relies upon an error of law appearing on the face of the record, shall be allowed to allege such error, if he files, within ten

days after the record is brought up, a written statement alleging specifically the errors of which he complains; otherwise his appeal shall be dismissed. The appeal in this case, of course, cannot be dismissed on the ground that the appellants failed to file the assignment of errors within ten days after filing the transcript, because the appellants do not depend upon the assignment of errors to maintain their appeal. But, if the errors thus complained of were not already brought up for decision by the appeal, they could not be considered as presented in time by the assignment of errors. The assignment of errors in this case, however, merely advances an argument in support of the pleas of prescription of ten and three years. The question, to what extent those pleas should have been maintained and to what extent they should have been overruled, was considered and finally decided in the former appeal in this case and is res judicata. The assignment of errors on that question must therefore be disregarded.

88 The plaintiff bought the land in contest, being a part of Lot 7 of Section 8 and of Lots 1, 7 and 12, and all of Lot 6, of Section 17, from Dr. Andrew W. Smythe on the 1st of May, 1907. Dr. Smythe acquired it from the State of Louisiana, under patent dated the 3rd of June, 1874. The land was granted to the State by virtue of the Swamp Land Grant of March 2, 1849 (9 U. S. Statutes at Large, p. 352), and was selected, surveyed and approved to the State as swamp or overflowed land to which the State was entitled, as per list of approvals dated May 5, 1874.

The defendants bought from Dr. Charles A. Gaudet, on the 16th of February, 1893, a tract of land described as fronting on Bayou St. John and extending back in a westerly direction to Milne Street, and therefore embracing the land in controversy. Dr. Gaudet acquired the same tract, bounded on the east by Bayou St. John and on the west by Milne Street, at a receiver's sale made under a decree of the U. S. Circuit Court for the Fifth Circuit and Eastern District of Louisiana, on the 27th of February, 1892, in the suit of James W. Peake v. City of New Orleans.

The land had been transferred by the City of New Orleans to the receiver under orders of the Federal Court in the receivership proceedings of Peake v. City of New Orleans, on the 11th of February, 1892. It had been transferred by or from the three boards of drainage commissioners for the drainage districts of Orleans and Jefferson (established by the Act No. 165 of 1858, p. 114, and Act No. 191 of 1859, p. 152) and was held in trust by the Board of Administrators of New Orleans, by the Act No. 30 of 1871, entitled an act to provide for the Drainage of New Orleans. It was acquired by the Board of Commissioners of the First Drainage District on the 21st of July, 1863, by virtue of public sales made by the sheriff in execution of judgments for taxes due to the draining district, assessed respectively, against the heirs of Charles D. Moran and the Milne Orphan Asylum. The four Milne Asylums afterwards approved and ratified the sale of their property.

Thus far, the defendants, tracing their chain of title backward in time, have shown a title upon its face translative of the property

in contest. But the plaintiff has shown an unbroken chain of title from the government of the United States. And, in order to
89 defeat that title, (eliminating questions of prescription) it devolved upon the defendants to show a title, antedating that of the plaintiff, from one of the plaintiff's authors or vendors, or from the French or Spanish Government. The defendants do not claim title from the plaintiff's immediate vendor, Dr. Smythe, who acquired title from the State in 1874. They claim title from the State by virtue of the Acts No. 165 of 1858 and No. 30 of 1871, and by virtue of a plea of estoppel which will be referred to hereafter. They claim, primarily, that the title did not pass to the State under the Swamp Land Grant of 1849, but was embraced within prior grants by the French or Spanish Governments, approved by the United States.

The Moran title acquired by the Board of Commissioners of the First Draining District embraces a tract lying immediately south of the Milne concession, B. 164, and extending from Bayou St. John west to Milne Street, thus embracing the southern portion of the land in contest. It embraces also what has been surveyed by the United States Government as a fractional Sixteenth Section in place, adjoining on the east the southern portion of the land in contest.

The defendants thus trace title to that part of the land in contest back to one, Don Carlos Tarascon. The only evidence of a grant or concession to Tarascon is the declaration made in a deed by him to one Andre Jung, of date the 3rd of July, 1773, that the land was held by him, Tarascon, "by concession made to him by Monsr. Aubrey, French Governor, at the time of his domination, before Monsr. Foucoult, Commissary, as appears in the titles that he delivered to the purchaser." There is therefore no more evidence of a concession to Tarascon in this case than there was in the case of the Board of School Directors v. New Orleans Land Company, 138 La. 32, 70 South. 27. The reasons for holding that the New Orleans Land Company failed to prove that a valid or complete concession—or a concession at all—from the French or Spanish Government was made to Tarascon are fully set forth in the opinion rendered in that case. Although the decision then rendered did not (because of the plaintiff's lack of authority to prosecute the suit) become final, the reasons
90 for holding that there was no *proof was no proof* of a concession from France or Spain to Tarascon are entirely applicable to the present case, and it would serve no useful purpose to repeat them. It is sufficient to say that, in this case, as in that, the defendants failed to prove that there was any prior grant or concession conflicting with the right of the United States Government to grant the land, as it did, to the State of Louisiana.

The title acquired from the Milne Asylums, which the defendants contend embraces the remaining part of the land in contest, goes back to the grant to Alexander Milne, designated as O. B. 164. See Am. St. Papers, Vol. 17, P. L. Vol. II, p. 315. As to that title, it is sufficient to say that the Milne claim, according to the approved U. S. survey calls for a tract fronting on Bayou St. John and having a depth of 40 arpents. Therefore, as located on the approved govern-

ment survey, the rear or western boundary line of the Alexander Milne claim O. B. 164 is the eastern boundary line of that part of the land in contest designated as Lots 1 and 6 and the northern part of Lot 7 of Section 17, T. 12 S. R. 11 E. The learned counsel for the defendants contend that the official survey is incorrect—that the Milne claim extends back from the west bank of Bayou St. John 45 arpents, to Milne Street, and therefore embraces that part of the land in contest that appears on the photolithographic map as the southern part of Lot 7 of Section 8 and Lots 1 and 6 and the northern part of Lot 7 of Section 17. We are unable to find it so. There is no evidence in the record that the Surveyor General or Deputy U. S. Surveyor was wrong in his location of the line in question; and if we thought there was an error in that respect, it would not be for us to undertake to correct it. As was said in Cragin v. Powell, 128 U. S. 691, 32 L. Ed. 565, the power to make or correct surveys of the public lands belongs to the political department of the government and while the lands are subject to the supervision of the General Land Office, its decisions in such cases are unassailable by the courts except by a direct proceeding. See also Boatner v. Scott, 1 Rob. 546. Our conclusion is that the defendants' title, emanating from the claim of Alexander Milne, does not embrace the land in contest.

The defendants contend further that the State's acqui-
91 sition of Lot 7 of Section 8 and Lots 1, 6, 7 and 12 of Section 17, in T. 12 S. R. 11 E. under the Swamp Land Act of March 2, 1849, inured to the boards of drainage commissioners of the draining districts of Orleans and Jefferson, under and by virtue of the Act No. 165 of 1858, and inured to the Board of Administrators of New Orleans, under the Act No. 30 of 1871. The act No. 165 of 1858 did not purport to transfer any land of the State to the leveeing and draining district created by that statute, nor did it authorize the board of commissioners of the district to levy taxes upon any public land. Nor did the Act No. 30 of 1871 purport to transfer any land of the State to the Board of Administrators of New Orleans. When the land was assessed for taxes, and seized and sold to the board of Commissioners of the drainage district, it was a part of the public land of the United States, subject to approval to the State as swamp or overflowed land; and it was therefore not subject to taxation. That question was also fully considered in the case of the Board of Directors of Public Schools v. New Orleans Land Co. supra; and it would be useless to repeat here the reasons assigned for the opinion in that case, that the State was not estopped, by any act of the legislature to claim and dispose of the land after it was approved to the State as swamp or overflowed land.

There is no merit in the plea of prescription of thirty years, filed in this Court. In the appeal from the verdict and judgment rendered on the plea of prescription of ten years, it was found that the defendants had not had possession, for a period of ten years before the institution of this suit, of any of the land that was left in contest by the decree then rendered. There is no more evidence before us now than there was then of the defendants' possession of the land prior

to the institution of this suit. The plea of prescription of thirty years is therefore overruled.

Referring now to the appellee's answer to the appeal all that can be said against the defendant's demand for compensation for improvements made and taxes paid on the land is that the evidence was not sufficient to maintain the claim or base a judgment
92 upon it.

The evidence does not show affirmatively that the defendants are not entitled to compensation. Under the circumstances the judgment of non-suit on the defendants' claim for compensation is correct.

The judgment appealed from is affirmed at the cost of the appellants.

Leche, J. takes no part.

*Syllabus.*

(1) An assignment of errors, filed in the appellate court more than ten days after the record is brought up, comes too late.

(2) The making, correcting and approving of surveys of the public lands is under authority of the General Land Office of the United States, and the decisions of that department of the government are not subject to correction by the courts in suits between individuals.

(3) Act No. 165 of 1858, providing for leveeing, draining and reclaiming certain portions of the swamp lands in the parishes of Orleans and Jefferson, did not purport to transfer any land of the State to the leveeing and draining district created by the act; nor did the statute authorize the board of commissioners to tax the lands belonging to the State within the district.

(4) Act No. 30 of 1871, providing for the draining of New Orleans; did not purport to transfer any land of the State to the Board of Administrators of New Orleans.

[Seal Supreme Court of the State of Louisiana.]

93 *Opinion and Judgment of the Supreme Court of Louisiana in Cause No.* 19456.

UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

NEW ORLEANS, Monday, June 30th, 1913.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Frank A. Monroe, Oliver O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Provosty, pronounced the opinion and judgment of the Court in the following case:

By Mr. Justice Provosty, June 30, 1913.

No. 19456.

LEADER REALTY COMPANY, LIMITED,

**VS.**

LAKEVIEW LAND COMPANY AND NEW ORLEANS LAND COMPANY (Consolidated).

Appeal from the Civil District Court, Parish of Orleans, Division "D," Porter Parker, Judge.

For the purpose of draining the territory lying between the city of New Orleans and Lake Pontchartrain, which was a swamp, the legislature in 1858 created a Board of Drainage Commissioners and authorized it to levy a tax upon the lands composing said territory and to cause said lands to be seized and sold to satisfy said tax in case of non payment. In 1863, at tax sales made under this authority, all that tier of tracts of land from the lake to the city, fronting on Bayou St. John on the east, and bounded in the rear, or west, by lands belonging to the state, were adjudicated to said Board, with the exception of two. The lands thus adjudicated were afterwards transferred to the city of New Orleans by the legislature; and in 1893 were sold at a receiver's sale, in the matter of James W. Peake vs. City of New Orleans, No. 12,008 of the docket of the Circuit Court of the U. S. Eastern District of Louisiana, to C. A. Gaudet;
94 and the latter immediately sold them at private sale to the defendant. The other two tracts of said tier of lands were sold at state tax sales in 1899 to J. B. Maylie, who in 1904 sold them to the defendant company. The state lands bounding the said lands on the west were acquired from the state in 1874 by Andrew W. Smythe, and the eastern part, now in controversy, was sold by him to the plaintiff company in 1907. All of these lands had been laid out into streets and squares. The western boundary of the state lands was Milne Street. In the tax proceedings for the adjudication to the Drainage Board, and in the deeds by the receiver to Gaudet and by the latter to defendant, the description is both by boundaries and by the numbers of the squares; and in this description the said State lands are included, for the western boundary is given as Milne street, and the numbers of all the squares comprising the state lands are given; so that on the face of the papers these several transfers included the said state or Smythe lands.

The two tracts sold at state tax sale to Maylie are described in the deeds to him by the same description as on the assessment roll, as follows:

"A certain tract of ground in the square bounded by Polk Avenue,

French Street and Bayou St. John and Milne, designated as squares Nos. 1015 and als." A certain tract of ground in square bounded by Twiggs, Downs, Bayou St. John & Milne streets, designated as square No. 1219 et als.

We have transcribed the descriptions as they appear in the deeds; that is to say, each deed gives the number of but one of the squares, and leaves the others to be represented by the general words "& Als."

The present suit was filed in December, 1909. It is a petitory action for the recovery of the eastern part of the said state or Smythe lands. Defendant sets up its titles; and, in connection with that acquired from Gaudet, pleads estoppel and the prescription of ten years' acquirandi causa; and in connection with that acquired from Maylie pleads the same prescription, and also that of three years by which nullities in tax sales are cured.

95 Plaintiff admits that the title of Smythe was divested by the tax sale of Maylie, but only to that part of the land embraced within the squares; not to that part occupied by the streets. And this contention would seem to be well founded. True, the thing sold is described in the tax deed as "a tract of land," but this tract of land is said to be bounded by streets, and is said to be "designated" as squares Nos. &c.; and Maylie in his sale to the defendant company described each square by its number and by the four streets bounding it, and thus sold only the squares; and he declared that he was selling what he had acquired at the tax sale; thereby adopting the interpretation that the tax sale had conveyed to him only the squares.

It is not shown, or even suggested, that the State's, or Smythe's, or plaintiff's title to the space occupied by these streets, was ever divested, by dedication or otherwise. Plaintiff's title from Smythe, and the latter's from the State, are by lot, section and township, or, in other words, according to the maps of the United States surveys. Plaintiff, then, is owner of the streets, and defendant of the squares.

This is certainly a peculiar situation. But it is brought about as the result of the application of clear principles of law, and there is nothing for this court but to recognize it. None but the owner can dedicate to the public; and the state, Smythe or plaintiff have never dedicated these streets. We have considered whether the dedication might not have resulted from the warranty which the owner of property sold at a judicial or forced sale owes to the purchaser at the sale. Ordinarily such an owner warrants the title transferred at the sale; and must reimburse the price to the purchaser if the latter is evicted; and an eviction from the streets is to all intents and purposes an eviction from the squares, for what the purchaser intended to buy and did buy was squares with streets; not squares without streets, squares accessible by streets; not squares so enclaved as not to be accessible at all. According to this, the warranty would extend

96 to the maintenance of the purchaser in the use and enjoyment of the streets. But, on the other hand, this warranty is the creature of express law; and, since it exists independently of the consent of the owner, it is in derogation of common right; and,

as a consequence, must be strictly construed; it cannot be extended by implication. So restricted, it extends no further than to the legality of the title which the enforced vendor himself held. He warrants that his own title to the thing seized and sold was good; and when that obligation is satisfied, he is wholly liberated and absolved; he owes absolutely nothing more. He stands sponsor for absolutely nothing else. He does not stand sponsor for the acts of his creditors in causing to be seized and sold only a part of the property instead of the whole. His is altogether a passive and negative attitude. He consents to nothing. The proceedings against him or his property are in invitum; against his will. It cannot be said that he stands by and impliedly consents to the sale; or to what is being done. He simply yields obedience to the law which authorizes the creditor to cause the whole or a part of his property to be seized and sold to satisfy his debt. Whatever property is seized and sold he is divested of; whatever property is not seized and sold, he continues to be the owner of. If the creditor chooses to seize and sell only the eastern part, or the western part, or the middle part, or sundry parts here and there, of the property; (as, for instance the squares and not the streets), the sale will convey title to the parts thus seized and sold; and to absolutely nothing else: and it can make no difference that these parts thus seized and sold are in the form of squares with spaces of fifty or more feet between them. And the purchaser at the enforced sale is conclusively presumed to know that the sale is being made against the will of the owner, who is consenting to nothing, and that he gets title to what has been seized and sold and to absolutely nothing else. In all that we have here said in regard to warranty we have assumed that a tax debtor whose property is sold at tax sale, owes warranty, but this we have done merely for argument, not meaning to express any opinion in that regard, but simply adopting, for the nonce, the views most favorable to defendant's side.

97 In the syllabus of defendant's brief the grounds of the estoppel are stated, as follows:

The State of Louisiana having passed valid laws to incorporate Drainage Boards in the Parishes of Orleans and Jefferson, and having given such boards power to levy a drainage tax to pay for the work of drainage, with the right to purchase the land, could not, after the assessment has been made, the work done, the land bought in by the drainage Board—and held in trust to pay for drainage work, issue—of divesting the Drainage Board—of their title of their transferees."

We fail to discover the slightest ground for the state's being estopped. It is now fully settled that, "No estoppel results against the state by reason of the fact that the tax assessor erroneously assessed the land to an individual and the tax collector sold it for non-payment of taxes resulting from such assessment." Slattery vs. Leonard, 110 La. 86; Cordill vs. Quaker Realty Co. 130 La. 933; In re Veith, 130 La. 1108; Quaker Realty Co. vs. Purcell, 59 South 915; Quaker Realty Co. vs. Labasse, 60 South, 661. In the next place, it is not true to say that the State authorized her own lands to be taxed, for she did not: on the contrary, she made an appropriation of $81,000 as

ber contribution towards the drainage in question. The rule is that state property is impliedly excepted when authority is given to levy a tax. A. & E. E. of L. Vol. 12, pp. 367,-69; 37 Cyc. 872. Then, again, nothing shows that the drainage work in question was ever done. On the contrary, the contention of defendant is that these lands were still waist deep under water when it undertook to drain them. Finally, these lands were sold in suits against the owners of the front lands. Why the state, who was not a party to these suits and had no notice of them, should be bound by any proceedings had in them, it would not be easy to reconcile with sound legal principles.

The prescription of ten years is well founded as to that part of the land nearest the lake. Defendant has exercised upon it acts of possession dating ten years back of the filing of these suits; but it is not well founded as to the rest of the land, upon which defendant has exercised no acts of possession dating ten years back of the filing
98 of these suits. Upon the former, that is to say, upon that part between Adams and Downs streets, defendant, as early as 1893 and '4, established and operated a draining pump, made surveys, and opened roads. We gather also, tho not positively proved, that some squatters upon the land, who were cultivating small patches upon three of the two hundred and twenty one squares, attorned to defendant. But the effect of these acts of possession cannot be extended to the lands south of Downs street, for the reason that the defendant did not have a title translative of property, or, in fact, any title at all, to these lands South of Downs street, between Downs and Twiggs streets, until it acquired the Maylie title in 1904,—only six years before the filing of this suit. And, doubtless that was the reason why defendant did not extend its roads beyond Downs street when, in 1893 and '4, it undertook to improve its said lands. The Maylie tract, which then belonged to the Milne Asylum, intervened between defendant's said land upon which defendant exercised these acts of possession and the other lands, and, such being the case, defendant cannot invoke the doctrine that possession of part with title to the whole is possession of the whole. On that point this court said in Gulf Refining C. vs. Jeems Bayou Hunting and Fishing Club, 129 La. 1026, "Where one acquired, though at the same time and from the same person, distinct and widely separate tracts of land, and takes actual possession of one or more of them the rule that possession, under title, of part of an estate is possession of the whole has no application to the tracts not actually taken possession of." The proposition is a plain one, and really needs no reinforcement by authority. "That the tracts must be contiguous," says the Supreme Court of Arkansas, in Brown vs. Bosquin, 57 Ark. 97; 20 S. W. 813 "is without exception in authority."

The acts of possession which defendant has shown upon these other lands are probably of a sufficiently pronounced character to serve as a basis for the prescription of ten years, but they do not date further back than 1903. The only one of them which it is pretended goes back ten years before the filing of this suit is the
99 pumping. This pump was established in a canal dug by the Orleans Levee Board along Adams street, which was the lake

side boundary of defendant's land. It was operated for two years, until the city drainage pump at the Orleans canal was established. The man who operated it says that the land was made dry enough for a person to walk across it. Whether he meant by this that all the land was thus drained or only that part belonging at that time to defendant, in other words, that part north of Downs street, does not appear. It does not appear that any canals were ever dug across the Milne Asylum or Maylie tract of land, which intervened between defendant's land nearest the lake and the other lands, but we gather that the entire area from the city to the lake was a continuous swamp; and the inference would, therefore, be that defendant's pump did, more or less, affect the water level upon this Milne Asylum or Maylie tract and upon the other lands south of it which it separated from defendant's land. But, assuming this to have been the case, this lowering of the water level upon a tract of land, or even the draining of it dry, as the result of draining another tract of land separated from it by an intervening tract of land, or as the result of draining a swamp of which it forms a part, cannot constitute the "public and unequivocal" possession required by the Code for the prescription of ten years' acquarandi cause. If two tracts of land are so situated that one of them cannot be drained without at the same time draining the other, the draining of one of them is no indication of an intention to possess the other as owner, or of a hostile possession of the other. Indeed, unless the tract upon which the drainage works are established is higher and does not owe a servitude of drain to the rest of the swamp, its owner is not at liberty to dam off the waters, and hence in draining them he exercises the function of a servant to the lands to which the servitude is due and not those of a master over them. The case would be different if it were shown that canals had been dug upon the land as part of a scheme of drainage.

Moreover, this pump was operated for only two years; so that, even if its action could be deemed to have been an act of ownership over the lands, its duration would not have continued during the requisite ten years.

100 Plaintiff contends that the tract nearest to the lake, that is to say, that part north of Downs street and of the Milne Asylum or Maylie tract, was acquired by defendant not as a continuous tract of land but as 221 squares numbered respectively from 1297 to 1518; and that, therefore, upon the principle, that the effect of acts of possession upon one tract cannot be extended to another tract separated from it by an intervening tract, for the purpose of prescription, the acts of possession shown by defendant can support the plea of prescription only as to those particular squares upon which they were exercised.

In the first place it is not so certain that defendant did not buy from Gaudet a continuous tract of land. True, in the sale to Gaudet by the receiver and in the sale by Gaudet to defendant, the description is by regularly numbered squares and by reference to streets; but it is also by the boundary lines of the tracts as a whole. Thus: "5. A tract of land beginning at the north line corner of the Bayou St. John of the lands belonging to Female Orphan Society

and having twelve arpents, more or less, on said Bayou St. John, thence along said May Street to Milne Street, measuring forty-five arpents, eighty feet, more or less, thence south along Milne street, nine arpents, one hundred and forty-two feet, more or less, thence on a line to the said Bayou St. John, measuring forty-five arpents and ninety-six feet, more or less, bounded on the north by the lands of the late J. B. Genois, on the west by Milne Street, on the south by lands of the Female Society and on the east by the St. John Bayou, as per plan of J. A. D'Hemecourt, surveyor, dated 30—, 1860, deposited in said office of said commissioner of First Drainage District."

In the next place, even if the description had been by streets and squares only, and even if that part occupied by these streets had been segregated from the squares by dedication (a fact not shown) it would not follow that the acts of possession had not been sufficient. The streets existed only on paper; the locus was a wild swamp; the defendant established a drainage pump for draining the en-
101 tire tract and opened roads through the entire tract along the lines marked on the map for the streets. These were acts of ownership of the entire tract and were public and unequivocal.

We deem it prudent not to undertake to frame the decree in this case, but to remand the case for this work to be done by the trial court, with the assistance of the counsel in the case, in accordance with the views herein expressed.

We have said that defendant's tract nearest the lake extends as far south as Downs street. This we did merely for convenience in statement. As a matter of fact it stops short of doing so.

The dimensions are stated with precision in the deed by Gaudet to defendant; and defendant's title by prescription, so far as that tract is concerned extends that far and no farther. As to all this tract nearest the lake the plea of prescription of ten years is sustained. As to all the rest of the property in dispute it is overruled. The tax title to Maylie and by Maylie to defendant is held to be valid; but only as to the squares embraced in it; not as to the streets. Except in so far as the plea of prescription of ten years is sustained and in so far as the tax title is thus declared to be valid, the title of plaintiff is recognized and ordered enforced to the property in dispute.

For convenience in restatement the judgment appealed from is set aside.

It is therefore ordered, adjudged and decreed that the judgment appealed from be set aside, and that this case be remanded to the lower court for the decree therein to be framed in accordance with the views herein expressed. All costs to be paid by defendant.

(Endorsed): 19456. Leader Realty Co.

102 *Writ of Error from U. S. Supreme Court to State Supreme Court of Louisiana.*

Filed October 30th, 1917.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court, the New Orleans Land Co., and the Lakeview Land Co. being appellants or Plaintiffs in error before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Leader Realty Co., and the New Orleans Land Co. and the Lakeview Land Co., Nos. 20818 and 19456—of the docket of your Court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of *the* clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said New Orleans Land Company and Lakeview Land Co. as by their complaint appears. We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error
103 what of right, and according to laws and customs of the United States, should be done.

Witness, the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the thirtieth day of October, in the year of our Lord one thousand nine hundred and seventeen.

[Seal U. S. District Court for the Eastern District of Louisiana, N. O. Div.]

H. J. CARTER,
*Clerk of the District Court of the United States for the Eastern District of Louisiana.*

Allowed by—
FRANK A. MONROE,
*Chief Justice Supreme Court of Louisiana.*

104 *Decree of the Supreme Court of the United States as Reported in 248 U. S., 550, in the Matter of the New Orleans Land Company.*

No. 12008, C. C.

United States District Court, Eastern District of Louisiana

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

*"Per Curiam:*

Dismissed for want of jurisdiction upon the authority of Sec. 237 of the Judicial Code as amended by Act of Sept. 6, 1916, C. 448, 39 Statutes 726".

105 *Opinion of the Court: Foster, District Judge.*

Filed May 8th, 1919.

U. S. District Court, Eastern District of La., New Orleans Division.

No. 12008, C. C.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

NEW ORLEANS LAND COMPANY

vs.

LEADER REALTY COMPANY, LTD.

On Application of the New Orleans Land Company for an Interlocutory Injunction.

In this case the New Orleans Land Company, a Louisiana corporation, has filed an ancillary bill against the Leader Realty Company, Ltd., also a Louisiana corporation, seeking to enjoin the execution of a judgment of a State Court.

It appears from the pleadings and the evidence submitted that in 1891 a bill was filed by James W. Peake in the late circuit court of the United States for the Eastern District of Louisiana for the foreclosure of certain drainage warrants and the appointment of a receiver. As a result of that action the sale of certain real estate situated in the Parish of Orleans was made at public auction and the property was bought by Dr. C. A. Gaudet.

Later on the property was transferred by Gaudet to the New Orleans Swamp Land Reclamation Company whose name was changed to the New Orleans Land Company, the plaintiff in this present action. Thereafter the Leader Realty Company instituted a petitory action in the Civil District Court for the Parish of Orleans against the New Orleans Land Company to determine the title of the same property. Judgment was rendered in favor of the Leader Realty Company, and in due course was affirmed by the Supreme Court of Louisiana. A writ of error was then sued out to the Supreme Court of the United States and in due course the writ of error was dismissed.

106 On a rule to show cause issued against the Leader Realty Company they except to the jurisdiction of this court on the grounds that no Federal question is involved and no diversity of citizenship appears, and also plead res adjudicata. These contentions seem to me to be well founded.

There is no doubt that in a proper case a Federal court having jurisdiction may enjoin the execution of the judgment of a state

court, where that court was without jurisdiction over the parties Such is not the case here. There is no diversity of citizenship shown. Neither the present plaintiff nor the defendant were parties to the original suit of Peake against the city of New Orleans, therefore the mere fact that the property in controversy was sold under orders of this court does not raise a Federal question.

The Receiver sold such title as he had. That sale did not preclude one not a party to the suit from setting up a superior title against the purchaser. The state court has held in a proceeding in which all the parties were properly before it, and of which it undoubtedly had jurisdiction, that the title of the Leader Realty Company was superior to that of the New Orleans Land Company.

It seems to me that as between these two parties the question is settled.

The application for a preliminary injunction will be denied.

(Signed) RUFUS E. FOSTER,
*Judge.*

May 8, '19.

107 *Order Denying Application for a Preliminary Injunction.*

Extract from the Equity Journal, February Term, 1919.

NEW ORLEANS, Thursday, May 8th, 1919.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.

(Late Circuit Court.)

No. 12008.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

This cause came on to be heard at a former day upon the application of the New Orleans Land Company, complainant in the bill of complaint filed in this cause on April 21st, 1919, and after hearing the evidence offered and arguments of counsel for the respective parties, the matter was submitted, when the Court took time to consider.

Whereupon, and on due consideration thereof, and for the written reasons of the Court on file herein,

It is ordered by the Court that the said application for a preliminary injunction herein be, and the same is hereby, denied.

108 *Motion and Order for New Trial.*

**Filed May 12, 1919.**

**United States District Court for the Eastern District of Louisiana**

**No. 12008.**

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

On motion of Chas. Louque and W. O. Hart, Solicitors for the New Orleans Land Company, Complainant herein and on suggesting to the Court that the refusal by the presiding Judge to issue a preliminary writ of injunction herein, is contrary to law and the evidence, for the following reasons, to-wit:

1. That this Court declined the jurisdiction of this cause and at the same time passed on the merits of the case by maintaining a plea of res judicata based on the validity of the judgment of the Supreme Court of Louisiana;

Your Movers respectfully urge that if the Court was without jurisdiction that it was without right or power to pass on the plea of res judicata;

Your Movers now represent that irrespective of the question of citizenship of the parties herein this Court was vested with jurisdiction, because;

2. This suit is based on the ancillary jurisdiction of this Court;

3. This suit was filed for the purpose of maintaining the jurisdiction of the Court and the validity of its decree heretofore rendered;

4. The parties to the suit, although nominally not the same by name, originally before the Court, were the transferees of real estate purchased from the adjudicatee of the Court, who was a party to said cause by virtue of his purchase;

5. The law and decree of the Court would be ineffective if it merely intended to protect the original purchaser and not his vendee;
109 if the vendor or original purchaser could not transfer his rights to any third person, the property purchased by him would remain a dead burden on his hands.

6. The proceedings herein were merely a continuation of the original suit for the purpose of enforcing and maintaining a title which the Court had decreed;

7. The merits of the controversy were not in dispute before this Court, the question being merely whether such a judgment had been

rendered by the United States Court, and if so, no State Court had the right nor power nor jurisdiction to upset the decrees of this Court;

8. The appearance before the State Court of the Complainant herein could not vest the State Court with the right, power and jurisdiction to set aside the decree of the Federal Court;

9. The Complainant who appeared in said case did not submit to the jurisdiction of the State Court but urged in defence that said State Court had no power and right to trample upon and set aside and treat as null the decree of the United States Court;

10. The Circuit Court of the United States in the case of James Wallace Peake vs. City of New Orleans, which was a case where the jurisdiction was conferred by reason of the diversity of the citizenship, had the right and jurisdiction to pass on all questions before it, and its judgment was therefore a valid exercise of its jurisdiction;

11. The State of Louisiana, through its Legislative transferee, the City of New Orleans, was a party to said suit and the judgment bound the State and no right which arose prior to the sale by the United States Court, could after said sale be urged, said judicial sale having forever concluded all the rights of third persons;

12. The Federal question involved is whether Court- of the United States have been established for the purpose of being subor-
110 dinate to the State Court, or whether having first obtained jurisdiction, it can maintain its decrees and make them effective?

13. Section 720 R. S. relates only to stay of proceedings begun in the Courts of a State before any resort to the Federal Court.

14. James W. Peake, a citizen of New York claimed as cestui que trust, the Circuit Court of the United States recognized his right and rendered judgment in his favor, foreclosing the trust. No State Court had the jurisdiction to upset this judgment.

All the authorities tend to maintain this judgment. Julian vs. Central Trust Co., 193 U. S. 103; approved in Gunther vs. Atlantic Coast Line, 200 U. S. 292; Hull vs. Burr, 234 U. S. 723, where the Court said: "hence, it has been held that in aid of its jurisdiction properly acquired, and in order to render its judgment and decrees effectual, a Federal Court may restrain proceedings in a State Court which would have the effect of defeating or impairing such jurisdiction" quoting several decisions.

Simon vs. Southern Railway, 236 U. S. 124-125, where the Court said: "There have been however, a few cases where there was equity in the bill brought to enjoin the Plaintiff from enforcing the State judgment and where that equity was found to exist, appropriate relief has been granted. For example Julian vs. Central Trust Co, 193 U. S. 112, a judgment *was* obtained in a State Court, execution thereon was levied on property which, while not in possession of the

Federal Court, was in possession of a purchaser who held under the conditions of a federal decree.

"It was held that the existence of that equity, authorized an injunction to prevent the Plaintiff from improperly enforcing his (State Court) judgment even though it may have been perfectly valid in itself.

111 "Other cases might be cited involving the same principle. But this is sufficient to show that in a proper case, the Plaintiff holding a valid state judgment can be enjoined by the United States Court from its inequitable use," etc.,

It is therefore ordered that the Leader Realty Co. Ltd., do show cause on the 23d of May, 1919, at 10:30 A. M., why a new trial should not be granted herein.

Service accepted.

(Signed) LEMLE & LEMLE, *Att'ys.*

112 *Hearing and Submission on Motion for a New Trial.*

Extract from the Equity Journal, May Term, 1919.

NEW ORLEANS, Friday, May 23rd, 1919.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

(Late Circuit Court.)

No. 12008.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

This cause came on this day to be heard upon the motion for a new trial filed by the New Orleans Land Company, complainant in the bill of complaint filed in this cause on April 21st, 1919;

Present: Chas. Loque and W. O. Hart, solicitors for said complainant, mover;
" Johnston Armstrong, of counsel for the Leader Realty Co., Ltd., defendant;

and was argued by counsel for the respective parties and submitted, when the Court took time to consider.

113 *Opinion on Motion for New Trial.*

Filed June 26th, 1919.

U. S. District Court, Eastern District of La., New Orleans Division.

No. 12008, C. C.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

NEW ORLEANS LAND COMPANY

vs.

LEADER REALTY COMPANY, LTD.

On Motion for a New Trial.

In this case the motion for a new trial has been earnestly pressed but I can not see my way clear to grant it.

In the original case the court had jurisdiction only by diversity of citizenship. The circuit court rendered a final decree without retaining jurisdiction for any purpose. The court of appeals affirmed the judgment and jurisdiction over the land sold passed entirely out of the circuit court by the sale. I can not see that the issues now presented are ancillary to the original suit or are in any way connected with it.

One point, however, seems to be well taken. It was unnecessary for this court to express an opinion as to the plea of res adjudicata raised by the defendant. That part of the opinion will be recalled and the bill will be dismissed for want of jurisdiction.

There will be a decree accordingly.

(Signed) RUFUS E. FOSTER,
*Judge.*

114 *Decree Denying Motion for New Trial and Dismissing Bill of Complaint of the New Orleans Land Company.*

Filed June 28th, 1919.

United States District Court, Eastern District of Louisiana.

No. 12008, C. C.

JAMES WALLACE PEAKE

versus

CITY OF NEW ORLEANS.

NEW ORLEANS LAND COMPANY

vs.

LEADER REALTY COMPANY, LTD.

This cause came on to be heard at a former day upon the motion filed by the New Orleans Land Company, complainant in the bill of complaint filed in this cause on April 21st, 1919, for a new trial, and was argued by counsel for the respective parties and submitted, when the court took time to consider;

Whereupon, and on due consideration thereof, and for the written reasons of the Court on file herein,

It is ordered by the Court that the said motion for a new trial herein be, and the same is hereby, denied;

It is further ordered, adjudged and decreed that the said bill of complaint of the New Orleans Land Company, complainant herein, be, and the same is hereby, dismissed for want of jurisdiction, at said complainant's costs.

(Signed) RUFUS E. FOSTER,
*Judge.*

New Orleans, La., June 28, 1919.

115 *Certificate of Question of Jurisdiction, Petition and Order of Appeal, and Assignment of Errors.*

Filed July 7th, 1919.

United States District Court, Eastern District of Louisiana.

No. 12008.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

Certificate of Question of Jurisdiction.

The District Court of the United States, for the Eastern District of Louisiana, hereby certifies to the Supreme Court of the United States, that on the 28th day of June, 1919, a judgment was entered in the above entitled action, pursuant to the decision of said Court, sustaining an objection made by the defendant, the Leader Realty Co., Ltd., to the petition of the New Orleans Land Co., praying for an injunction and other relief,

The objection to the jurisdiction of this Court to entertain the petition of the New Orleans Land Co., claimed to be filed as an ancillary proceeding to the case of James Wallace Peake vs. City of New Orleans, was maintained on the following grounds:

1st. That it appears on the face of the petition that the Court has no jurisdiction by reason of the want of diversity of citizenship of the parties;

2nd. That the proceeding is an original action by the New Orleans Land Co., against the Leader Realty Co., Ltd., both of which parties were not involved in the suit of James W. Peake vs. City of New Orleans; the two opinions rendered by the Court and on file on the motion of the New Orleans Land Co., for an injunction, are annexed hereto and made part of this certificate, showing in detail the reasons why the bill of complaint was dismissed.

The question at issue is whether or not the bill of complaint in this case can be considered an ancillary proceeding or an original action and the Court is of the opinion that it is an original action.

New Orleans, July 7, 1919.

(Signed) RUFUS E. FOSTER,
*Judge.*

116 *Petition for an Appeal and Order Granting Same.*

Filed July 7th, 1919.

United States District Court, Eastern District of Louisiana.

No. 12008.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

The petition of the New Orleans Land Co., a citizen of the State of Louisiana, respectfully represents:

That your petitioner is aggrieved by the decree herein rendered, dismissing the bill of complaint herein filed on the ground of want of jurisdiction and desires to take an appeal direct to the Supreme Court of the United States;

Wherefore, petitioner prays that an appeal be granted to your petitioner from the decree herein rendered refusing the application for a writ of injunction and dismissing the bill of complaint filed herein for want of jurisdiction returnable to the Supreme Court of the United States within thirty days according to law and Petitioner furnishing such bond as may be fixed by this Court and Petitioner prays for general relief, etc.

(Signed) CHAS. LOUQUE,
W. O. HART,
*For N. O. Land Co.*

*Order.*

Let, as prayed for an appeal be granted to the New Orleans Land Co., from the decree herein rendered dismissing the bill of complaint filed herein returnable to the Supreme Court of the United States within thirty days on petitioner giving bond, according to law in the sum of Five Hundred Dollars.

New Orleans, July 7, 1919.

(Signed) RUFUS E. FOSTER,
*Judge.*

117 *Assignment of Errors.*

Filed July 7th, 1919.

Supreme Court of the United States.

JAMES WALLACE PEAKE

vs.

CITY OF NEW ORLEANS.

And now comes the New Orleans Land Co. Appellant, and files this their assignment of errors:

1. The lower Court erred in considering the bill of complaint filed herein as an original bill; that said bill is an ancillary proceeding to obtain "and secure the fruits, benefits and advantages of the proceedings and judgment in the case of James Wallace Peake vs. City of New Orleans, in this Court, by additional parties, standing in the same interest," and "to assert a claim, right and title to property which had been in the custody of the Court" and which had been sold to the complainant's vendor, Dr. C. A. Gaudet; the whole in accordance with the doctrine summarized in Bates on Federal Equity Proceedings, Vol. 1, para. 97, which doctrine has been duly approved and adopted as correct by the Supreme Court of the United States in Julian vs. Central Trust Co., 193 U. S. page 93, and other decisions.

2. That the proceedings above mentioned in the United States Court, were instituted to foreclose a trust created by the laws of Louisiana, under Act No. 30 of 1871, and was a proper matter for the exercise — equitable jurisdiction of the United States Court.

3. That the State of Louisiana had the perfect right to create the trust, the more so if the property was its own; the title of the State having been derived, as claimed, from the swamp land grants made in 1849 and 1850, and being completed by the survey made by Sulokosky in 1872, consequently in 1874, the date on which the patent was issued by the State to Dr. Smythe showed the State had no interest in the land adverse to the Act No. 30 of 1871.

4. That any question relative to the title and ownership of the property in dispute in this case, which could have been raised, should have been brought to the attention of the Court, prior to the confirmation of the sale ordered by the United States Court and
118 not in a proceeding in a State Court, which was meant to destroy and annul the title issued and given by the United States Court.

5. That in 1892, at the time that the late Circuit Court of the United States entertained and assumed jurisdiction over the subject

matter of the trust and enforced by a decree of sale, the validity of said trust, it was the first and only court, which had the subject matter under jurisdiction and no other Court had the power, right, or jurisdiction to assail said proceedings, either directly or indirectly.

6. That whether the judgment and decree of sale were correctly rendered or not, said decree and sale were final and forever concluded any question as to the validity of said trust; that said proceedings were proceedings in rem and neither the state, her transferee Dr. Smythe and his vendee the Leader Realty Co., Ltd., had any right to treat said proceedings as null and void or voidable.

7. That the proceeding and bill of complaint now filed have for object the maintenance of the decree of sale and judgment so rendered and to prevent any disregard of same and therefore, it is clearly an ancillary bill.

8. That the Courts of the United States have been given jurisdiction in law and equity by the Constitution of the United States in all matters where there is diversity of citizenship and when that jurisdiction has once been exercised and the judgment or decree is final and rights have been transferred and acquired by third persons, they become parties to the proceedings so had, and have the right in an ancillary proceeding to claim the benefit of said jurisdiction and judgment and decree thereunder.

9. That the matter in dispute exceeds Three thousand dollars.

Wherefore, the Appellant prays that the decree herein rendered which refuses the injunction prayed for and dismisses the bill filed herein, be reversed, that the Court be decreed to have jurisdiction herein to entertain said bill and that the cause be remanded to the lower Court with the instructions to hear and determine this
119 cause on the merits and to grant the relief prayed for in the bill, and for general relief, etc.

(Signed) CHAS. LOUQUE,
W. O. HART,
*Att'y for N. O. Land Co.*

120 *Bond on Writ of Error.*

Filed July 7th, 1919.

Know all men by these presents, That we The New Orleans Land Co., as principal, and James A. Brennan, as surety, are held and firmly bound unto the Leader Realty Co., Ltd., in the full and just sum of Five hundred dollars to be paid to the said Leader Realty Company, certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 7 day of July, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between the New Orleans Land Co. and the Leader Realty Co. resulting from James W. Peake vs. City of New Orleans, No. 12,008 of the docket of the late Circuit Court of the United States for the Eastern Dist. of Louisiana a final judgment was rendered against the said New Orleans Land Co. dismissing its bill of complaint and refusing the injunction prayed for and the said New Orleans Land Co. having obtained and order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Leader Realty Co., Ltd., citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at the City of Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said principal shall prosecute their appeal to effect, and answer all damages and costs if they fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

(Signed) THE NEW ORLEANS LAND CO., [SEAL.]
By W. O. HART, *Atty.* [SEAL.]
(Signed) JAS. A. BRENNAN. [SEAL.]

Approved by—
(Signed) RUFUS E. FOSTER,
*Judge.*

UNITED STATES OF AMERICA,
*Eastern District of Louisiana, ss:*

Personally Appeared, James A. Brennan, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides in the City of New Orleans and is worth the full sum of Five hundred Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) JAS. A. BRENNAN.

Subscribed and Sworn before me this 7 day of July, 1919.
(Signed) H. J. CARTER,
[SEAL.] *Clerk U. S. District Court, Eastern District of Louisiana.*

121 *Præcipe for Transcript.*

Filed July 7th, 1919.

Præcipe of the Documents to be Copied by the Clerk of the U. S. District Court for the Eastern District of Louisiana, No. 12008 of the Docket of said Court:

1. Bill of complaint N. O. Land Co. subpœna and return; extract minutes and judgment and opinions dismissing bill.

2. Petition, answer and judgment in J. W. Peake vs. City of New Orleans, No. 10,810 of the docket of this Court.

3. Decision of the Supreme Court of the United States as reported in 139 U. S. 345, and decree.

4. The petition, answer and judgment appointing Receiver in J. W. Peake vs. City of New Orleans, No. 12,008 of this Court from printed record 46, Circuit Court of Appeals—pp. 1 & 2.—4, 5, 6, 7, 8, 9, 10—extract inventory 13 to 22—31, 32, 42 to 46 to 51,—65 to 75.

5. Decree confirming sale 111-112.

6. The map—exhibited by the receiver at sale.

7. Judgment Fifth Circuit Ct. of Appeals, reported in 52 Fed. Rep. 74.

8. Petition in Leader vs. N. O. Land Co. printed Record 306, U. S. Sup. Ct. Oct. Term, 1918,—p. 1-2, answer, 86, 87, 88, 89—judgt. Supt. Ct. La., 279 to 285—writ of error 307 and decree Supreme Court U. S.

N. O. July 7, 1919.

(Signed) CHAS. LOUQUE,
W. O. HART,
*Solicitors for N. O. Land Co.*

Please include opinion and decree of the Supreme Court of Louisiana as printed in the record pages 78 to 85 both inclusive.

2. The opinion and decree of the Supreme Court of Louisiana in the printed record pages 272 to 285 both inclusive.

If this is included in plaintiff's instructions No. 8, it need not be copied in the record again.

July 10, 1919.

(Signed) GUSTAVE LEMLE,
*Of Counsel for the Leader Realty Co.*

122 *Additional Pracipe for Transcript.*

Filed July 9th, 1919.

Charles Louque,

Attorney at Law,

833 Conti Street.

NEW ORLEANS, LA., July 8, 1919.

H. J. Carter, Esq., Clerk U. S. District Court, Eastern District of Louisiana, City.

DEAR SIR:

In addition to the documents to be included in the transcript of appeal, in re James Wallace Peake vs. City of New Orleans, please copy the note of evidence, which was filed on the trial of the rule nisi for the injunction.

Remaining, yours very respectfully,

(Signed)

CHAS. LOUQUE,
W. O. HART,
*Solicitors.*

Served a copy on Mr. Gus Lemle opposite counsel N. O., July 9, 1919.

CHAS. LOUQUE.

123 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office:

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 122 pages contain and form a full, complete, true and perfect transcript of the record, evidence, assignment of errors and proceedings in the matter of New Orleans Land Company, complainant, versus Leader Realty Company, Limited, defendant, taken in the case of James Wallace Peake versus City of New Orleans, No. 12,008 of the docket of the late Circuit Court of the United States for the Eastern District of Louisiana, New Orleans Division (made in accordance with the pracipes for transcript, copied herein).

Witness my hand, and the seal of said Court, at the City of New Orleans, Louisiana, on this 28th. day of July, A. D., 1919.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER,
*Clerk.*

124 Issued for Chs. Louque & W. O. Hart, Att'ys.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to the Leader Realty Co., Ltd., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a motion of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein the New Orleans Land Co., has taken an appeal to the Supreme Court of the United States from a decree dismissing their bill of complaint against the Leader Realty Co. Ltd. No. 12,008, of the docket of this Court, to show cause, if any there be, why the judgment rendered against the said New Orleans Land Co. as in said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 7th day of July, in the year of our Lord one thousand nine hundred and nineteen.

(Signed.) RUFUS E. FOSTER,
*Judge.*

Clerk's Office.

A true copy.

H. J. CARTER,
*Clerk.*

New Orleans, La., July 7, 1919.

125 Received by U. S. Marshal, New Orleans, La., July 7, 1919. And on July the 9th, 1919, I served the original of this citation of appeal on Leader Realty Co. by handing same to John Arm-

strong, Atty. for Leader Realty Co., who accepted service for Philip G. Veeth, President of Leader Realty Co., New Orleans, La.

FRANK J. MILLER,
*U. S. Marshal.*

By J. E. WOOD,
*Deputy.*

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. No. 12,008, C. C. James Wallace Peake vs. City of New Orleans. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Jul- 25, 1919. E. Wendling, Dy. Clerk.

Endorsed on cover: File No. 27,227. E. Louisiana D. C. U. S. Term No. 472. The New Orleans Land Company, appellant, vs. Leader Realty Company, Ltd. Filed July 31st, 1919. File No. 27,227.

No. 472-152

# SUPREME COURT OF THE UNITED STATES

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JAMES W. PEAKE,

versus

CITY OF NEW ORLEANS.

---

OCTOBER TERM 1919.

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MOTION TO ADVANCE.

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**BRIEF ON BEHALF OF THE NEW ORLEANS LAND CO., APPELLANT, ON MOTION TO ADVANCE ITS ANCILLARY BILL AGAINST THE LEADER REALTY CO.**

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CHS. LOUQUE,
W. O. HART,
*Of Counsel.*

No. 472

# SUPREME COURT OF THE UNITED STATES

---

JAMES W. PEAKE,

versus

CITY OF NEW ORLEANS.

---

OCTOBER TERM 1919.

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## MOTION TO ADVANCE.

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On motion of Charles Louque and W. O. Hart of Counsel for the New Orleans Land Co. and on suggesting to the Court that this cause presents only a question of jurisdiction which under rule 32 of this Honorable Court **"will be advanced on motion."**

It is ordered by the Court that this cause be fixed for trial on the.....day of.....and that the opposite party be notified.

I certify that copy of this motion has been served on this....19.....day of September, 1919. on Messrs. Lemle & Lemle and W. W. Wall.

New Orleans, September...19....., 1919.

Chas Louque

No. 472

# SUPREME COURT OF THE UNITED STATES

J. W. PEAKE

versus

CITY OF NEW ORLEANS

OCTOBER TERM 1919.

## BRIEF ON BEHALF OF THE NEW ORLEANS LAND CO., APPELLANT, ON MOTION TO ADVANCE ITS ANCILLARY BILL AGAINST THE LEADER REALTY CO.

This cause presents a question of jurisdiction solely.

The decision rests on one point only: Is the bill of complaint filed by the New Orleans Land Co. an ancillary one or not?

If, as we construe the law and the equity jurisdence, we are entitled to file the bill, the Court is vested with jurisdiction, and the judgment which dismisses our bill for want of jurisdiction should be reversed and the cause remanded to be tried on its merits.

The grave question which is at issue in this case is, when any of the United States Courts sitting as Courts of Equity, render a solemn judgment decreeing that a State had a right and did by its statutes, create a trust in favor of a creditor for work to be done, and the work being done the Court ordered the trust to be executed by the sale of the trust estate, through its master in Chancery, which sale the Court afterwards confirmed, whether these proceedings can be disregarded by the State Court, treated as null and the purchaser dispossessed, without any right on the part of the United States Court to protect him and his assigns and maintain its jurisdiction which was lawfully acquired?

When the Constitution of the United States provided for Courts of its own, giving them full jurisdiction in law and equity, this was a real grant of power, which when exercised, must and shall be respected by the State Courts.

In the case at bar, James W. Peake a citizen of the State of New York, a judgment creditor, brought his bill of complaint against the City of New Orleans, the legal trustee of the drainage fund, for himself and all the other creditors of the drainage fund, in the late Circuit Court of the United States for the Eastern District of Louisiana, having territorial jurisdiction of the City of New Orleans. The bill alleged that under acts of the Legislature of Louisiana of March 18th, 1858, No. 165, 1859, No. 191, 1861, No. 57 and act No. 30 of 1871, a drainage system was created by the State of Louisiana, officers appointed, who complied with the requirements of the act, **"levied, execution upon various pieces of prop- "erty and bought in the same and took a surrender of "various other pieces in satisfaction of drainage taxes**

**" imposed thereon * * * all of which are held in trust " for the creditors** of the drainage fund."

The prayer of the bill was for the appointment of a Receiver, and the sale of the trust property, etc. The Receiver was appointed and qualified as such, took possession of the assets, including the land in dispute, obtained an order for the sale of said property, sold the same to Dr. C. A. Gaudet, the transferer of the New Orleans Land Co., the Court confirmed the sale, the judgment of confirmation was, on appeal to the Circuit Court of Appeal for the Fifth Circuit, duly affirmed, as seen by the judgment reported in 52 Fed. Rep. 74, Peake vs. New Orleans; the purchaser paid the price of adjudication to the Receiver, received his regular deed of sale and went into possession of the property purchased by him. This took place in 1892 and on February 20th, 1893, received his deed of sale.

In 1909, December the 8th, a petitory action was filed by the Leader Realty Co. claiming the land in dispute. The State Court finally rendered judgment in favor of the Leader Realty Co. The New Orleans Land Co., transferee of Dr. Gaudet, who had purchased from the Receiver, sought the protection of the United States Court, praying that the sale made by and under its orders be maintained by the issuance of a writ of injunction, and its previous jurisdiction asserted.

This proceeding is clearly an ancillary one wherein the New Orleans Land Co. is seeking to obtain **"and secure the fruits, benefits and advantages of the proceeding and judgment of the United States Court by additional parties** standing in the same interest" and to "assert a claim, right and title to the property which had been in the custody of the Court."

If there be any virtue and authority in the decrees of this Court which adopted the doctrine above quoted and laid down by Mr. Bates on Federal Equity as decided in *Julian vs. Central Trust Co.*, 193 *U. S., p.* 93, then the decree appealed from should be reversed and this cause remanded to be tried on its merits. Meanwhile the writ of injunction prayed for should be issued to protect the interest of the Complainant.

" When a Court has jurisdiction, it has the right to " decide every question that arise the cause; and whether " the decision be correct or not its judgment is regarded " as binding in every other Court." 10 *Peters* 475, *Voorhies vs. Bank.*

* * * " titles acquired under the proceedings of Courts " of competent jurisdiction must be deemed inviolable " in collateral actions, or none can know what is his own; " and there are no judicial sales around which greater " sanctity ought to be placed than those made under " orders of Court." 2 *How* 343, *Grignon's Lessees vs. Astor et als.*

It would be a grave defect in the organization of the United States Government if sales made under the authority of its own Courts could be disregarded, without right on the part of her Courts to protect and maintain their own jurisdiction.

We consider this short synopsis of this cause to be sufficient to obtain the granting of the motion to advance made under rule 32 of this Court.

No other question is involved.

Respectfully submitted,

CHS. LOUQUE,
W. O. HART,
*Of Counsel.*

The United States Court having jurisdiction of an equity cause in which real estate was sold under its orders to foreclose a trust, has jurisdiction to entertain an ancillary bill to protect the purchaser and his assigns, in their title and possession.

Under rule 32 of this Court, an appeal involving merely a question of jurisdiction, is entitled to be advanced.

New Orleans, September 15th, 1919.

# Supreme Court of the United States

October Term, 1920

## No. 152

NEW ORLEANS LAND COMPANY,
Appellant,

versus

LEADER REALTY COMPANY, LTD.
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

## BRIEF FOR THE NEW ORLEANS LAND COMPANY.

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## BRIEF FOR THE NEW ORLEANS LAND COMPANY.

This case presents only a question of jurisdiction.

Can the Courts of the United States maintain the validity and effect of their judgments, and protect the

titles of property purchased under their orders, when sitting in equity, in the exercise of their lawful jurisdiction and when such sales have been duly confirmed?

Do not such purchasers become parties to the original suit, and when they seek the protection of the Court are they not entitled to present their complaint in ancillary proceedings?

## SYLLABUS.

When a Court of the United States first obtains jurisdiction of the parties and of the *res*, its judgments are final and conclusive.

A State Court must respect the judgments of the United States Courts and has no jurisdiction to set them aside.

The United States Courts which order the foreclosure of a trust by the sale of the trust property receives and orders the purchase price, in its registry and has not yet distributed the same, may in the exercise of its jurisdiction protect the funds on deposit by enjoining the State Courts and the parties from interferring with the purchasers of the trust property. 193 *U. S.*, 93, 112; *Julian vs. Central Trust*, 148 *U. S.*, 529, 533, 534; 132 *Fed.* 945, 949; 151 *Fed.*, 145, 160; *Fed.* 360; *Lang vs. Choctaw Oklahoma and Gulf R. R. Co.*, 36 *Fed.* 337; 22 *Wall*, 250, 103; *U. S.*, 494; 2 *How*, 340; 10 *Peters* 475.

Good faith and the correct administration of justice requires the Court having jurisdiction should protect the purchasers who are by the fact of their purchase, parties

to the suit. 2 *Wall*, 634; 10 *Paige* 602; *Calvert* on parties in equity and note to page 61, an ancillary bill, is one which has reference to a previous proceeding and is so connected with it, that it seeks to obtain some action to protect the decree previously rendered and make it effective. 160 *Fed.* 360; *Lang vs. Choctaw, Oklahoma and Gulf Co.*, and authorities there cited.

Will the State Court be allowed to annul and destroy the judgments and decrees of the United States Courts and the titles made thereunder when the United States Courts had first obtained jurisdiction of the persons and of the *res*.

Does not the United States Court retain its jurisdicton so long as the proceeds of the sale remain under the control of the Court deposited in its registry, and can the same Court not protect the titles of property sold by it, so that a refund of the proceeds become unnecessary?

These are the questions presented by the record.

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We lay down the proposition, at the start, "that a " purchaser or bidder at a master's sale, subjects himself " *quoad hoc* to the jurisdiction of the Court and becomes " so far a party to the suit, by the mere act of making a " bid, that he could appeal from any subsequent order of " the Court affecting his interest. 2 *Wall* 634; *Minnesota Co. vs. St. Paul Co.;* 10 *Paige* 612; *Calvert* on parties to suits in equity, pages 51, 58 and note to page 61.

This case is of the greatest importance by reason of the values in dispute and of the principles involved.

The United States Court having first obtained jurisdiction of the parties and of the *res*, its decisions could not be upset and overruled by the State Courts.

When the United States Court decided to foreclose the trust for the benefit of the beneficiary, it in effect, declared that a trust did exist.

The State Court years afterwards could not legally, as it did, decide to the contrary, that there was no trust.

The judgment of the United States Court decided in effect, that the property to be sold was affected by the lien created by statute; the State Court decided that no lien existed.

The United States Court ordered its receiver to give good and valid titles to the purchaser; the State Court decided that the receiver could give no valid title to the purchaser.

No Appellate Court could as effectually have destroyed the judgment of the Circuit Court as the State Court actually did more than ten years after its rendition.

The facts which brought about the institution of this ancillary bill, are:

That on December 18th, 1884, James W. Peake, a citizen of New York, brought suit against the City of New

Orleans, as trustee of the drainage fund and recovered judgment against the City, "to be paid out of the drainage fund". *R.* 8 *to* 17.

The same Plaintiff, then brought a suit in equity against the City of New Orleans to render her liable for the whole debt due by the drainage fund, amounting, as found by this Court to $2,242,514.78, alleging a breach of trust. *R.* 17 *to* 22., 139 *U. S.* 249.

This Honorable Court decided that inasmuch as the City was not a voluntary trustee and had exerted her best judgment in the administration of the trust that no personal liability existed. *R.* 22., 139 *U. S.* 249 *to* 351, *Peake v. City of New Orleans.*

Thereupon the same complainant, James W. Peake, still a citizen of New York, brought his bill against the City of New Orleans, "to the end that the trust fund " created by Act 30 of 1871 and the other Acts of the " Legislature of the State of Louisiana, hereinbefore " referred to may be closed up and all the assets and " property thereof may be sold, and the proceeds of sale " be applied to the payment of the creditors of said fund; " to appoint a Receiver to take possession and charge " of all the property and assets of every nature and kind, " real, personal or mixed, now held and possessed by the " said City of New Orleans under and pursuant to said " Acts of the Legislature of the State of Louisiana to-wit: " Act No. 165 of 1858; 191 of 1859; No. 57 of 1861; and " Act No. 30 of 1871; and under the direction of the " Court, to sell and dispose of the same and apply the

" proceeds of said sale to the payment of the creditors of " said fund." *R.* 23-24.

The City answered.—*R.* 24 *to* 28.

The Receiver was duly appointed. *R.* 29.

The Court in rendering the order added specifically:

> "And the said Complainant, or the said Receiver " shall be at liberty to apply to the Court from time " to time, for such further order or direction as may " be necessary." *R.* 29.

An inventory of the property held by the City in trust was made. *R.* 29 *and* 30.

The Receiver applied for the sale of the property inventoried to pay the debts. The Judge ordered the sale to be made at public auction, after legal advertisement, to the highest bidder, for cash, and "the Receiver was au- " thorized and empowered to execute and deliver to the " purchasers **good and valid titles, free from all liens, " mortgages or encumbrances if any there are.**" *R.* 31.

The Receiver advertised and sold the property. *R.* 31 *to* 40. The portion in litigation was sold to Dr. C. A. Gaudet, the transferer of Complainant. *R.* 40 *to* 49.

These sales were duly confirmed after hearing the opposition made by the City of New Orleans, the statutory transferee of the State. *R.* 49.

The City appealed from the judgment of confirmation to the Circuit Court of Appeals for the Fifth Circuit.

The judgment of confirmation was affirmed and the mandate issued in June 1890. *R.* 50-51.

Dr. Gaudet sold to the complainant in 1893. In 1909 the Leader Realty Co., filed suit against the Complainant in the Civil District Court for the Parish of Orleans, to recover the property sold, basing its title on a state patent, issued in 1874, three years after the passage of Act 30 of 1871, creating the trust; this land patent was never placed of record in the Conveyance Office. *R.* 51-52.

The land patent was of no validity since the State had already disposed of her interest to the City.

To this suit the New Orleans Land Co. pleaded that as transferree of Dr. Gaudet it acquired the land by virtue of the foreclosure of the trust above recited and that the judgment of the Circuit Court which ordered the sale and confirmed the same was binding on the State Court and could not be disregarded. *R.* 53.

Nevertheless the Judge of the State Court gave judgment for the land. *R.* 55-56.

This judgment was affirmed by the Supreme Court of Louisiana. *R.* 57 *to* 63.

The judgment of the Supreme Court contains the admission, that the land in contest is the same bought by Dr. Gaudet. *R.* 60. It also admits that the property was purchased by him by virtue of orders issued by the Circuit Court of the United States. *R.* 60.

A writ of error to this Court was dismissed for want of jurisdiction. The Complainant then applied to the District Court of the United States, to protect, the title which that Court had sold through its Receiver, alleging the facts above stated. *R.* 1 *to* 5.

The prayer of the bill was for the issuance of a writ of injunction to protect and preserve the judgments and titles given thereunder to your Complainant. The bill was filed in the same proceedings for the foreclosure of the trust. The Judge issued a rule *nisi*, and after hearing the parties, refused the injunction and dismissed the bill for want of jurisdiction. The Reasons given by the Judge are at p. 72 of the Record.

The Judge in substance said that there was no diversity of citizenship shown. That neither the New Orleans Land Co., nor the Leader Realty Co. were parties to the original suit of *Peake against the City of New Orleans* and **" therefore the mere fact that the property in con- " troversy was sold under orders of this Court does not " raise a Federal question."** *R.* 72-73.

In passing on a rule for new trial the Judge said:

> "In this case the motion for a new trial has been " earnestly pressed, but I cannot see my way clear to " grant it.
>
> "In the original case the Court had jurisdiction " only by diversity of citizenship. The Circuit Court " rendered a final decree, without retaining juris- " diction for any purpose.

"The Court of Appeals affirmed the judgment and " jurisdiction over the land sold, passed entirely out " of the Circuit Court by the sale. I cannot see that " that issues now presented are ancillary to the " original suit or are in any way connected with it.

"One point, however, seems to be well taken. It was " unnecessary for this Court to express an opinion " as to the plea of *res judicata* raised by the defendant. " That part of the opinion will be recalled and the " bill will be dismissed for want of jurisdiction." *R.* 77.

The complainant took the present appeal to this Court.

The question is narrowed down to whether or not this bill is original or ancillary.

This Honorable Court, in *Julian vs. Central Trust*, 193 *U. S.*, 93, said:

• • "We are of opinion that a supplemental bill may be " filed in the original suit, with a view to protecting " the prior jurisdiction of the Federal Court and to " render effectual its decree (citing authorities). " In such cases where the Federal Court acts in aid " of its own jurisdiction and to render its decree " effectual, it may, notwithstanding Section 720 " *R. S.*, restrain all proceedings in a State Court " which would have the effect of defeating or im- " pairing its jurisdiction."

The Eighth Circuit Court of Appeals, Judge Trieber as the organ of the Court, followed this ruling in the case of *Smith vs. Missouri Pacific R. Co.*, 266 *Fed.*, 655-666, quoting the case of *Lang vs. Choctaw, Oklahoma and Gulf*

*R. Co.*, 160 *Fed.* 355, 360, saying: "A bill in equity, dependant upon a former suit, in the same Court, may be maintained by the purchaser under the decree, or **by any other party interested therein**, to aid, enjoin or regulate the original suit; to restrain, avoid, explain, **or enforce the judgment or decree therein**; or to enforce, to enjoin the enforcement of, or to obtain an adjudication of liens upon or **claims to property** involved in the original suit. *Brun vs. Mann*, 151 *Fed.* 145, and where a Federal Court acts in aid of its own jurisdiction to render its decree **or the title under it effectual**, it may, notwithstanding Section 720 *R. S.*, restrain all proceedings in a State Court which would have the effect of defeating or impairing its jurisdiction; quoting 36 *Fed.*, 337; 22 *Wall*, 250; 103 *U. S.* 494.

The test by which an original bill differs from an ancillary one, is by the relief sought and prayed for.

The complainant in this case seeks no other relief than that the judgment ordering the sale and the confirmation of the sale be maintained in full force and that the State Court be not permitted to interfere with the purchaser. *R.* 4.

No new issue is injected into this case; no new title is alleged or claimed. The whole question raised is that the Circuit Court having acquired jurisdiction, should maintain it and preserve the rights acquired under the exercise of that jurisdiction.

It was a very limited and narrow view for the lower Judge to take, when he decided that 'the complainant

was not a party to the foreclosure of the trust. Dr. Gaudet, the purchaser, certainly was. When he sold to the New Orleans Land Company, that company acquired all his rights to protection and became a party to the proceedings.

If the jurisdiction of the Circuit Court could extend no further than the original purchaser, no one would be found to acquire from him. Indeed the protection of the Court extends to the *res* of which the Court had possession and which the Court transferred.

To say that the parties to the Peake suit are not the same as in the present controversy is to ignore the fact that the State of Louisiana through her transferee, the City of New Orleans, was a party to the Peake case.

That the State, the previous owner, having once in 1871, by act of the Legislature, transferred her interest, to the City of New Orleans, could not subsequently, in 1874, transfer her interest to another party. She had nothing to transfer. The purchaser at the receiver's sale purchased all the interest which the State had and the purchaser stands in her shoes. More than that, and to show the illegality and vicious nature of the title set up by the Leader Realty Company, the State had by the acts of 1858, 1859, 1861 and 1869, directed the drainage boards how to proceed to divide the territory to be drained; how to levy a drainage assessment thereon, how the property should be seized and sold for the non-payment of the assessments and how the drainage boards were authorized to purchase same.

In pursuance thereof, the property now claimed by the Leader Realty Co. was assessed, seized, sold and purchased by the drainage boards and stood in their names when the Legislature in 1871 transferred the same to the City of New Orleans, to be held in trust for the payment of the work of drainage done by the Mexican Gulf Ship Canal Co.

The property was inventoried as such by the Receiver and transferred by the City of New Orleans as trustee to the Receiver and was subsequently sold by the Receiver under the orders of the Circuit Court to Dr. C. A. Gaudet.

It was in 1871, under Act No. 30 that the City became the trustee of all the property belonging to the drainage district in the City of New Orleans. This act of the Legislature ratified the title which the drainage boards had acquired and did effectually transfer the same to the City of New Orleans, to be held in trust for benefit of the drainage and eventually for the benefit of the City if not needed for drainage.

It does not lie in the power of the State nor of any of its transferees to deny the validity of the drainage assessments.

To say that the parties in the *Peake* case are not the same as in this suit is to disregard the fact that the transferers and transferees stand in the same light before the Court.

The State was present through her transferee the City of New Orleans; the creditor of the drainage fund, the transferee of the Mexican Gulf Ship Canal Co. and the pur-

chaser Dr. Gaudet who represented his transferee the New Orleans Land Co. were all parties to the original suit. The judgment foreclosing the trust being rendered against the first transferee of the State, bound the second transferee whose transfer was null, but even if valid was unregistered and was of no effect and null as to third persons.

The Legislative Act of transfer was passed in 1871; the sale to Dr. Gaudet was made in 1892 and completed in 1893 by a notarial act. The judgment of the Court concluded all previous acts and parties.

The patent of Dr. Smythe, even if valid and his transfer to the Leader Realty Co. were never placed of record in the Conveyance office, and were of no force and effect as to third persons and *bona fide* purchasers.

There existed no outstanding title superior to that of the Receiver. He held all that the State had and his transfer under the orders of the Court passed a complete and perfect title. The State had, by the Act of 1871, No. 30, transferred to the City of New Orleans and the City transferred to the Receiver in 1891. The Receiver sold to Dr. Gaudet. *R.* 48.

The act of sale executed by the Receiver to Dr. Gaudet recites: "By reference to the certificates from the register " of conveyance and the recorder of mortgages in and for " this Parish, annexed hereto, and of even date hereto, " it does not appear that said property had been heretofore " alienated by the City of New Orleans or the Board of " Drainage Commissioners or that it is subject to any " encumbrance whatsoever." *R.* 48.

It was within the power of the State of Louisiana to levy an assessment for drainage within the drainage district and create a lien to pay for the work of drainage. The State did in effect do that very thing, and authorized the Board of Commissioners to purchase the property in payment of the assessment. The property stood in the name of the Board of Drainage Commissioners when the Act of 1871 was passed transferring the same to the City to be held in trust for the payment of the drainage work. If the property was that of the State, this Court has held in the case of *New Orleans vs. Warner*, 175 *U. S.* 138, that public property was subject to an assessment for public improvement. Passing on that question this Court said:

"The argument is that public property being
" exempt from taxation is also exempt from these
" assessments; but the authorities have long recog-
" nized a distinction between general taxes, which are
" for the benefit of the public generally, and which in
" the nature of things the public must directly or in-
" directly pay and special assessments for the benefit
" of particular property, which are a charge upon the
" property benefitted. If this be private property,
" then each owner of such property pays his share; if
" it be public property the City pays it, as the agent
" of the entire body of citizens, who are assumed to
" have benefitted to that extent. 38 *A.* 323; 11 *A.*
" 338; 13 *A.* 319; 26 *A.* 362; 41 *A.* 251-259.

"In the *County of McLean vs. Bloomington*, 106
" *Ills.* 209, it was also claimed that public property
" being expressly exempt from taxes, was also exempt
" from special assessments. But said the Court, 'We
" have been too long and too firmly committed to the
" doctrine that exemption from taxation does not ex-

" cept from special assessments, to now admit, that
" it is even debatable.'

"This ruling was followed in *Adams Co. vs. Quincy,*
" 130 *Ills.* 566; *Beach on Public Corporations, Sec*
" 1172. * * * Private owners may be assumed to be
" interested in draining their own property, but in the
" absence of a special provision to that effect, there is
" no presumption that they are also to be called upon
" to pay that which *prima facie* belongs to the public.
" Indeed, in view of a recent decision in Massachu-
" setts, it may well be doubted whether the Legis-
" lature could impose the cost of draining public
" property upon private lot owners. *Sears vs. Street*
" *Commissioners.* 53 *N. E. Rep.* 876." 27 *A.* 497,
" *State ex rel Van Norden vs. New Orleans.*

So that when the Act of 1871, No. 30, created the trust in favor of the Mexican Gulf Ship Canal Co. the contractor for the drainage work, and subrogated the City of New Orleans to all the rights, privileges and liens held by the various Boards of Drainage Commissioners; the Circuit Court of the United States in ordering the sale of the property to foreclose the trust, sold it under this first existing lien and neither the State nor the Register of the Land Office could give a title free from such lien.

The judgment of the Circuit Court forever closed this question. The purchaser at the receiver's sale, could not afterwards be legally disturbed by a transferee of the State claiming the property free from any lien. The question having been closed by a prior judgment rendered by a Court of competent jurisdiction, was not open for review by the State Court. It is not only the right of

the complainant to claim protection, but it is the duty of the Court, having been seized first of jurisdiction, to extend its protection to the purchaser and his transferee.

It is firmly established that when a Court of competent jurisdiction has passed on a question of title, to real estate, that question is forever set at rest as against the world.

As long as the decree under which the sale has been made, remains in force, the purchaser is protected. *Werlein vs. New Orleans*, 177 *U. S.*, 403; 2 *Peters* 157; 112 *Fed.* 48; 106 *Fed.* 115; 229 *U. S.* 259; *Robertson vs. Howard.*

In the case of *Gregnon's Lessee, vs. Astor and als.*, 2 *How*, 343, this Court held that when the Court ordering the sale, was vested with jurisdiction, its decision was conclusive. The Court said:

> "We do not deem it necessary, now or hereafter, to retrace the reasons of the authorities, on which the decisions of this Court in that or the cases which preceded it, rested; they are founded on the oldest and most sacred principles of the common law. Time has consecrated them; the Courts of the States have followed, and this Court has never departed from them. They are rules of property, on which the repose of the country depends; *titles acquired under the proceedings of Courts of competent jurisdiction must be deemed inviolable in collateral actions, or none can know what is his own*, and there are no judicial sales around which greater sanctity ought to be placed, than those made of the estate of decedents, by order of those Courts to whom the laws of the States confide full jurisdiction over the subjects." (2 *How* 343.)

In the case of *Voorhees vs. Bank of the United States*, 10 *Peters* 475, the Supreme Court of the United States says:

> "It would be a well-merited reproach to our jurisprudence, if an innocent purchaser, no party to the suit, who had paid his money on the faith of an order of a Court; should not have the same protection under an erroneous proceeding, as the party who derived the benefit accruing from it. A purchaser under judicial process, pays the plaintiff his demand on the property sold, to the extent of the purchase money he discharges the defendant from his adjudged obligation." * * * "the principles which must govern this and all other sales by judicial process, are general ones adopted for the security of titles, the repose of possession and the enjoyment of property by innocent purchasers, who are the favorites of the law in every Court and by every code. Nor shall we refer to the decisions of State Courts, or the adjudged cases in the books of the common law; our own repeated and uniform decisions cover the whole case, in its most expanded view; and the highest considerations call upon us so to reaffirm them; that all questions such as have arisen in this cause, may be put to rest in this and the Circuit Courts." 10 *Peters* 475; *Voorhies vs. Bank of the United States.*

The Circuit Court of the United States and its successor, the District Court have not lost jurisdiction of the original cause of *Peake vs. City of New Orleans*, because the object of the bill of complaint, was to foreclose the trust, sell the property and distribute its proceeds to the beneficiaries.

The funds are still in the registry of the Court and have never been distributed. The Receiver died, but he has never been discharged. The trust is not yet liquidated, and the whole matter is still in the hands of the Court. The case is still open **for such further orders or directions as the Receiver might deem necessary".**

The Receiver could, if the sale to Dr. Gaudet and his transferer be of no effect, and declared null, apply to the Cour to refund to the purchaser the proceeds paid by him into the registry of the Court. This cannot be disputed.

If the Court has not lost control of the fund, and can dispose of it, the Court certainly can protect it. Is it not as clear as can be that the Court can exercise its jurisdiction in preventing the property sold from being taken away from its purchaser, by persons having no title to it and in doing so does not the Court protect the fund, by rendering a refund unnecessary.

As long as the Receiver is not discharged and has not distributed the funds realized from the sale of the property held in trust, the Court has the power to protect the jurisdiction it has acquired over the trust fund. Can it be possible that an enlightened tribunal, will allow the State of Louisiana, to order work of drainage to be performed, place the property to be drained in trust, for the payment of the work of drainage ordered, amounting to over $2,000,000, and then patent the land drained, free of any lien or trust to a third person?

The United States Court which rendered a judgment foreclosing the trust for the benefit of drainage contractor,

cannot in good moral, now reverse itself and abandon its *bona fide* purchaser to the mercy of another tribunal, usurping the jurisdiction of an appellate tribunal to overrule the findings and judgments of the United States Courts.

Appellant, therefore, prays that the judgment appealed from be reversed and that this cause be remanded with instructions to proceed to the trial on the merits and meanwhile that the injunction prayed be issued.

Respectfully submitted

CHS. LOUQUE,
W. O. HART,
*Of Counsel.*

N. O., Dec. 30, 1920.

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# AUTHORITIES

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1920.**

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## No. 152

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**Appeal from the District Court of the United States for the Eastern District of Louisiana.**

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**NEW ORLEANS LAND COMPANY,**
**Appellant,**

***versus***

**LEADER REALTY COMPANY, LTD.,**
**Appellee.**

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**Brief for the Leader Realty Company, Ltd.**

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### SYLLABUS.

The judgment of the Supreme Court of Louisiana decreed the Leader Realty Company's title to the land in question, derived from a certain source, to be superior to

the title of the New Orleans Land Company, derived from an entirely different source.

*Leader Realty Co. v. New Orleans Land Co., 142 La. 169.*

The District Court of the United States has no jurisdiction to review the judgment of the Supreme Court of Louisiana rendered in the said suit of *Leader Realty Co. v. New Orleans Land Co., 142 La. 169*, or to enjoin the execution thereof.

*United States Judicial Code, Par. 1030.*

The purchaser of real estate under an order of United States Court only acquires such a title as the defendant in execution possesses, and that Court has no jurisdiction to enjoin the execution of the judgment of the Supreme Court of a State holding the title of a third person, derived from an entirely different source than that of defendant in execution, the better title.

*Chicago v. Brewing Co., 108 U. S. 22.*
*High on Receivers, 4th Ed., Sec. 199, p. 322.*

The judgment of the Supreme Court of Louisiana recognizes the validity of the orders and judgment of United States Court in the case of *Peake v. City of New Orleans*, and gave full effect thereto, but held that the title of the Leader Realty Co., derived from an entirely different source, to be the better title of the two. Therefore, the present bill of complaint is not an ancillary bill to enforce any orders or decrees in the *Peake case*, but is a bill to reverse the judgment of the Supreme

Court of the State of Louisiana; and the District Court of the United States is without jurisdiction.

The receiver in the case of *Peake v. City of New Orleans*, No. 12,008 of the United States Circuit Court for the Eastern District of Louisaina, sold such title as the City of New Orleans had, and that sale did not preclude one, not a party to that suit, from setting up against the purchaser a superior title derived from an entirely different source than that of the City of New Orleans.

*Dupasseur v. Rouchereau, 21 Wal. 130.*
*Pittsburg v. Trust Co., 172 U. S. 510.*

The gist of the bill of complaint is that the Supreme Court of the State of Louisiana erred in the construction of several statutes of the State of Louisiana, which the District Court of the United States is asked to correct. The Federal Courts will follow the decisions of the Supreme Court of a state relative to the laws on real estate and the construction placed on the State Constitution and statutes.

*Burgess v. Seligman, 107 U. S. 20.*
*Archer v. Gravel Co., 233 U. S. 60.*

The question as to which of two suitors, whose titles are derived from entirely different sources, has the better title to real estate situated in the State of Louisiana, necessarily depends upon the laws of the State of Louisiana and the decision of the highest Court of that State must be final and determinative of the matter.

*Halstead v. Burton, 140 U. S. 273.*
*Burgess v. Seligman, 107 U. S. 20.*

The judgment being final and determinative, the Federal Courts have no jurisdiction to review the judgment because a link in the chain of title of one of the parties to the litigation to which the other was no party, was a purchase under a decree of a Federal Court.

## STATEMENT OF THE CASE.

On December 8, 1909, the Leader Realty Company, Ltd., the defendant in the present case, instituted suit in the Civil District Court for the Parish of Orleans against the Lakeview Land Company and the New Orleans Land Company to be decreed to be the owner of lots 1, 6 and 7 of Section 8 and lots 1, 6, 7 and 12 of Section 17, in Township 12 South, Range 11 East, in the Southeast District, east of the river, according to the plat of the survey of said lands in the State Land Office, comprising 321.42 acres. Said suits are numbered, respectively, 91,799 and 91,800 of the docket of the Civil District Court, Parish of Orleans (See petition, Tr., p. 51). By agreement, these two cases were consolidated.

On November 19, 1913, the New Orleans Land Company filed its answer in the case, alleging, among other things, the following:

> "That the defendant acquired from Dr. C. A. Gaudet, by an act before James Fahey, Notary Public, February 16th, 1893, and by a title translative of property, for a valuable consideration, and the title was duly registered in the Conveyance Office of this

parish, in Book 148, folio 89; that Dr. Gaudet acquired from the Receiver of the Drainage Taxes, on February 20th, 1893, by act before W. Morgan Gurley, Notary Public, duly registered in the Conveyance Office of this parish, Book 148 folio 93; which sale was made by virtue of proceedings had in the Circuit Court of the United States for the Eastern District of Louisiana, under No. 12,008 of said Court, in the matter of James W. Peake v. City of New Orleans, which sale was duly confirmed by said Court and subsequently affirmed by the Circuit Court of Appeals for the Fifth Circuit, under No. 46 of said Court, reported in 52 Federal Reporter, page 74.

"That said proceedings in equity before the Circuit Court of the United States effectually protected the interest of these respondents from any attack and especially where the lapse of ten years have rendered said proceedings conclusive and beyond power of attack, which prescription is now especially pleaded.

"That full faith and credit must be given to the judicial proceedings above mentioned by the Courts of this State, under the Constitution of the United States, and the same cannot in any wise be attacked in these proceedings.

"That J. Ward Gurley, the Receiver of the Drainage Taxes, duly appointed as such by the Circuit Court of the United States for the Eastern District of Louisiana, acquired said property from the City of New Orleans, by transfer and assignment, on

January 1st, 1892, before Joseph D. Taylor, Notary Public, under orders of said Court of the 13th of June, 1891, and the 5th and 13th of December, 1891, in suit No. 12,008 of said Circuit Court of the United States for the Eastern District of Louisiana.

"That the City of New Orleans acquired said property from the Commissioners of the First Drainage District by act of the Legislature, No. 30 of 1871, Section 9.

"That said act was passed for the purpose of carrying into effect the drainage of swamp lands donated over by the United States to the State of Louisiana under the swamp lands grants of Congress of 1849 and 1850.

"That the Commissioners of the First Drainage District acquired said property at Sheriff's sale for drainage taxes, on the 19th, 20th, 21st of July, 1863, and October 10th, 1863, March 12, 19, 1863, under proceedings No. 17,028 of the late Third District Court of New Orleans, transferred to the Civil District Court, under No. 92,640."

See Answer, Tr., p. 52.

On the issues thus joined, the case was tried in the Civil District Court for the Parish of Orleans on the 26th day of November, 1913, by Hon. Porter Parker, Judge. The entire record in the suit, styled *James W. Peake v. The City of New Orleans, No. 12,008, In Equity*, was introduced in evidence, and on May 14, 1914, judgment was rendered by the

Honorable Porter Parker, Judge, recognizing plaintiff as the owner of a portion of the land claimed. (See Judgment, Tr., p. 55.)

On June 29, 1914, defendants appealed from this judgment to the Honorable Supreme Court of the State of Louisiana, which affirmed the judgment of the lower Court at appellant's costs. (See *Leader Realty Co. v. Lakeview Land Co., 142 La. 170.)*

In the opinion, Mr. Justice O'Niell, as organ of the Court, said:

> "This is a petitory action, in which the plaintiff claimed title to lots 1, 6 and 7 of Section 8, and lots 1, 6, 7 and 12 of Section 17, in T. 12 S., R. 11 E., in the Southeastern District of Louisiana, east of the Mississippi River. * * *
>
> See Judgment, Tr., p. 57.
>
> "The plaintiff bought the land in contest, being a part of lot 7 of Section 8 and of lots 1, 7 and 12, and all of lot 6, of Section 17, from Dr. Andrew W. Smythe, on the 1st of May, 1907. Dr. Smythe acquired it from the State of Louisiana, under patent dated the 3rd of June, 1874. The land was granted to the State by virtue of the Swamp Land Grant of March 2, 1849 (9 U. S. Statutes at Large, p. 352), and was selected, surveyed and approved to the State as swamp or overflowed land to which the State was entitled, as per list of approvals dated May 5, 1874.

"The defendants bought from Dr. Charles A. Gaudet, on the 16th of February, 1893, a tract of land described as fronting on Bayou St. John and extending back in a westerly direction to Milne Street, and therefore embracing the land in controversy. Dr. Gaudet acquired the same tract, bounded on the east by Bayou St. John and on the west by Milne Street, at a receiver's sale, made under a decree of the U. S. Circuit Court for the Fifth Circuit and Eastern District of Louisiana, on the 27th of February, 1892, in the suit of James W. Peake v. City of New Orleans.

"The land had been transferred by the City of New Orleans to the receiver under orders of the Federal Court in the receivership proceeding of Peake v. City of New Orleans, on the 11th of February, 1892. It had been transferred by or from the three boards of drainage commissioners for the drainage districts of Orleans and Jefferson (established by the Act No. 165 of 1858, p. 114, and Act No. 191 of 1859, p. 152), and was held in trust by the Board of Administrators of New Orleans, by the Act No. 30 of 1871, entitled an Act to provide for the drainage of New Orleans. It was acquired by the Board of Commissioners of the First Drainage District on the 21st of July, 1863, by virtue of public sales made by the sheriff in execution of judgments for taxes due to the drainage district, assessed, respectively, against the heirs of Charles D. Moran and the Milne Orphan Asylums. The four Milne asylums afterwards approved and ratified the sale of their property.

"Thus far, the defendants, tracing their chain of title backward in time, have shown a title upon its face translative of the property in contest. But the plaintiff has shown an unbroken chain of title from the Government of the United States. And, in order to defeat that title (eliminating questions of prescription), it devolved upon the defendants to show a title, antedating that of the plaintiff, from one of the plaintiff's authors or vendors, or from the French or Spanish government. The defendants do not claim title from the plaintiff's immediate vendor, Dr. Smythe, who acquired title from the State in 1874. They claim title from the State by virtue of the Acts No. 165 of 1858 and No. 30 of 1871, and by virtue of a plea of *estoppel*, which will be referred to hereafter.

* * * * *

See Judgment, Tr., p. 60, No. 88.

"Defendants contend further that the State's acquisition of lot 7 of Section 8 and lots 1, 6, 7 and 12 of Section 17, in Township 12 South, Range 11 East, under the Swamp Land Act of March 2, 1849, inured to the Boards of Drainage Commissioners of the drainage districts of Orleans and Jefferson, under and by virtue of the Act 165 of 1858, and inured to the Board of Administrators of New Orleans under Act 30 of 1871. The Act No. 165 of 1858 did not purport to transfer any land of the State to the levee and drainage district created by that statute, **nor did it authorize the board of commissioners of the district to levy taxes upon any public land.** Nor did the Act No. 30 of 1871 purport to transfer any

land of the State to the Board of Administrators of New Orleans. When the land was assessed for taxes, and seized and sold to the Board of Commissioners of the drainage district, it was a part of the public land of the United States, subject to approval to the State as swamp or overflowed land; and it was therefore not subject to taxation. That question was also fully considered in the case of the Board of Directors of Public Schools v. New Orleans Land Co., *supra* (138 La. An. 32); and it would be useless to repeat here the reasons assigned for the opinion in that case, that the State was not estopped by any act of the Legislature to claim and dispose of the land after it was approved to the State as swamp or overflowed land."

(See judgment, Tr., p. 62 and 63.)

The New Orleans Land Co., the defendant in the said suit of *Leader Realty Co. v. New Orleans Land Co.*, decided by the Supreme Court of Louisiana, instituted the present action to enjoin the Leader Realty Co., Ltd., the Clerk and Sheriff of the Civil District Court from carrying the judgment rendered in said suits, No. 91,799 and 91,800, into execution, and attempting to dispossess the New Orleans Land Co. from the land purchased by Dr. S. A. Gaudet from the receiver. (See prayer of petition, Tr., p. 4.).

The Court issued an order to defendant to show cause why a preliminary injunction should not issue (Tr., p. 5). On May 8th, 1919, Hon. Rufus E. Foster, Judge of the

United States District Court, Eastern District of Louisiana, New Orleans Division, handed down a written opinion denying the injunction. (See Tr., p. 72.)

A new trial was then asked for and refused and the suit dismissed for want of jurisdiction. (Tr., pp. 74, 75, 76 and 77.) From this judgment complainant appealed to this Court (Tr., p. 80) and the District Judge has also certified the question of jurisdiction to this Honorable Court. (Tr., 79.)

## ARGUMENT.

The Supreme Court of the State of Louisiana fully considered the link in defendants' title, by which Gaudet acquired the land in the receivership proceedings in the matter styled *James W. Peake v. City of New Orleans, No. 12,008 of the United States Circuit Court, for the Eastern District of Louisiana*, and while giving full force and effect to the validity of those proceedings, held that Gaudet and his transferees acquired only such title as the defendant, the City of New Orleans, possessed, and that the Leader Realty Co., whose authors in title had acquired from the State of Louisiana by patent, had the better title to the land. The New Orleans Land Co. prosecuted a writ of error from the decision of the Honorable the Supreme Court of Louisiana to this Honorable Court. An application was made by the Leader Realty Co. to dismiss or affirm and the writ of error was dismissed for want of jurisdiction. An applica-

tion was made for a rehearing, which was refused. *(248 U. S. 250.)*

## THE COURT IS WITHOUT JURISDICTION.

1. The bill filed herein shows on its face that the present controversy is one between citizens of the same state, and, therefore, the Court is without jurisdiction due to diversity of citizenship.

2. The suit does not arise under the Constitution or laws of the United States or treaties made under their authority.

The Court is, therefore, clearly without jurisdiction. An attempt has been made, however, to confer jurisdiction on the Court for the reason that the bill filed herein is ancillary to the proceedings entitled *James Wallace Peake v. City of New Orleans, No. 12,908 of the United States Circuit Court for the Eastern District of Louisiana.* This is not an ancillary proceeding, as it does not seek to make any decree rendered in that case effective and no attack is being made on any order rendered therein.

A reference to the allegations of the bill will show that complainant alleges that a sale was made in the *Peake case*, which was confirmed, and complainant's authors in title placed in possession of the property. No attack is being made on the validity of this sale, nor is the proceedings in or the jurisdiction of the United States Circuit Court in

that matter assailed in any manner. The Supreme Court of Louisiana recognized the proceedings in the *Peake case* as well as the validity of the sale, but held that the Leader Realty Company's title, which had been acquired from another source, the State of Louisiana, was superior to the title of the New Orleans Land Co., which was that of the City of New Orleans, the defendant in the *Peake case*. The *Peake case*, therefore, has no connection with the present controversy. A reference to the prayer of the present bill (Tr., p. 4) will show that complainant is not seeking the aid of the Court to carry out any decree or order which was rendered in the *Peake case*, but to reverse the decision of the Supreme Court of Louisiana, which holds that the title of the Leader Realty Company, Ltd., derived from a source different from that of the City of New Orleans, defendant in the *Peake case*, is superior to that of the purchaser in the *Peake case*. The strangest part of the proceeding is the fact that complainant asks the United States District Court to reverse the judgment of the Supreme Court of Louisiana by putting a different construction upon the statutes of the State of Louisiana than has been placed thereon by the Supreme Court of the State of Louisiana. It is elementary that the decisions of the State Court relating to matters of local law, such as the construction of the State Constitution and statutes, will be regarded by the Federal Court as controlling when their application involves no infraction of any right granted or secured by the Constitution or laws of the United States. *Old Colony Trust Co. v. City of Omaha, 230 U. S. 101, Syl. 5; Railway & Light Com-*

*pany v. Railroad Commission of Wisconsin, 238 U. S. 174, Syl. No. 4.*

In *Hunter v. City of Pittsburg, 207 U. S 161,* it was held:

> "The policy, wisdom, justice and fairness of a state statute, and its conformity to the state's constitution are wholly for the Legislature and the Courts of the state to determine, and with those matters this Court has nothing to do."

In *Andrews v. National Foundry & Pipe Works, 76 Fed. 166,* the Seventh Circuit Court of Appeals, composed of Judges Woods, Showalter and Seaman, Mr. Justice Woods being the organ of the Court, it was held:

> "The first direct ruling of the Supreme Court of the State upon a particular question involving the construction of a State statute will be followed by the Federal Court."

In the present case complainant not only asks the United States District Court not to heed the construction placed by the Supreme Court of Louisiana on several statutes of the State of Louisiana, but to place a different construction thereon. The mere statement of the proposition shows how utterly absurd and devoid of merit the present bill is.

In *Burgess v. Seligman, 107 U. S., 20-33,* the Court said:

> "The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would

be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the Court of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is. * * * For the sake of harmony * * * the Federal Courts will lean towards an agreement of views with the State Courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the Courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid * * * any unseemly conflict with the well-considered decisions of the State Court."

In *239 U. S. 614*, it was held:

> "The proper construction of the Constitution and laws of a State is not for the Federal Supreme Court to determine on a writ of error to a State Court."

In *Price v. The People of the State of Illinois, 238 U. S. 446*, it was held:

> "This Court accepts the decision of the highest Court of the State, as to the construction of a pure

> food statute, and whether specified articles are included within the prohibitions thereof, and then determines whether, as so constructed, the statute is valid under the Federal Constitution."

In *Cusack v. The City of Chicago, 242 U. S. 526,* it was held:

> "A city ordinance, which has been upheld by the highest Court of the State as valid under State legislation, is to be regarded by this Court as a law of the State and to be tested accordingly."

Stripped of all extraneous matter, the position of complainant resolves itself to this: Where real estate is acquired at a sale made under orders of a Federal Court this Court has jurisdiction by ancillary proceedings to maintain the purchasers in possession of the property against all claimants, not parties to the original suit, regardless of the nature of their title thereto, and notwithstanding their claim under a title derived from a source entirely different from the defendant in the original suit. The mere statement of the proposition carries with it its refutation.

From any viewpoint, therefore, the United States District Court is without jurisdiction.

The United States District Court is inhibited from granting the injunction under Federad Code by Paragraph 1030 to stay proceedings in State Courts, except in certain cases therein mentioned.

In *American Assn., Ltd., v. Hurst, 59 Fed. 1 (the Sixth Circuit Court of Appeals, composed of Judges Taft, Luston and Levens)*, the facts were a bill was filed in the United States Circuit Court for the Eastern District of Kentucky praying that one named Colson be enjoined from selling property under an execution, and that another person by the name of Hurst be enjoined from directing said sale. Mr. Justice Taft, as organ of the Court, on page 5, after referring to the cases of *Freeman v. Howe, 34 How. 450; Buck v. Colbath, 3 Wallace 334*, and *Covel v. Heyman, 111 U. S. 176*, said:

> "The principle of the decisions in Freeman v. Howe, Buck v. Colbath, and Covel v. Heyman has a much broader application than counsel for appellant concede. The principle is that, in order to preserve the dignity and protect the effectiveness of the process of Courts of concurrent jurisdiction, and to avoid unseemly conflicts between them, and between their respective executive officers, no remedy of an injunctive or dispossessory character will be afforded by one Court against the acts of the executive officers of the other Court, when done under color of an order or process issuing from such other Court, because it would have the inconvenient and anomalous effect to stay the proceedings in one Court to allow another Court to investigate the validity of acts done under such proceedings. A replevin of personal property in the hands of its officer, or an injunction against a levy upon personal property by such officer will certainly not more offend the dignity of the Court, or more interfere with the due

> discharge of business before it, than will an injunction against a levy on real estate by its officer under color of its process. Moreover, the acts which it was here sought to enjoin were not mere levies upon real estate, but were the sale of it, and the execution of a deed to the purchaser, with a possible writ of possession, or, at least, with title upon which to found ejectment; so that, even if the principle of Freeman v. Howe, and other like cases, only applies when there is to be a conflict of possession between one Court and another, we think the remedy here sought would come within their inhibition."

The exact question we are here considering was involved in the case of *Watson v. Jones, 13 Wallace 679,* and the Court held:

> "Hence, an unexecuted order of this kind, made by a State Court to restore possession to the parties who had been deprived of it by a decree which had been reversed, cannot be interfered with by another Court by way of injunction, especially by a Court of the United States, by reason of the Act of Congress of March 2, 1793."

See Syllabus No. 3.

In this case, the Chancery Court of Kentucky had ordered certain property restored to the possession of certain parties. The United States Circuit Court was applied to for an injunction to prevent the said parties from taking possession. In the present case, the Supreme Court of Louisiana has affirmed the judgment of the lower Court,

decreeing the Leader Realty Company, Ltd., to be the owner of the land in question and putting it in possession of the property. As held by this Honorable Court, in *13 Wallace 678*, this unexecuted order of the State Court to deliver possession to the Leader Realty Company, Ltd., cannot be interfered with by another Court by way of injunction, especially by a Court of the United States. As an injunction is asked for in the present case to prevent the carrying out of the orders of the Supreme Court of the State of Louisiana, it is respectfully submitted that this is within the inhibition of the Judicial Code, paragraph 1030, and the District Court of the United States is without jurisdiction.

In *Whitney v. Wilder, 54 Fed. 554*, the Fifth U. S. Circuit Court of Appeals for the Fifth Circuit held:

> "The prohibition of injunctions against the State Courts extends to all cases over which such Courts first get jurisdiction, and applies to the officers and parties in the Courts, as well as to the Courts themselves. Therefore, a Federal Court has no power, on the complaint of a legatee and an executor under a will probated in one State to enjoin an administrator appointed in another State from distributing the funds under his control to the heirs at law."

Mr. Justice Toulmin, as organ of the Court, said:

> "It was said by this Court, in the case of Railway Co. v. Kuteman, 54 Fed. Rep. 547, that 'there is not in our system anything so unseemly as rivalry and

contention between the Courts of the State and the Courts of the United States.' The framers of our statute laws, foreseeing the evils of such conflicting jurisdiction, have wisely prohibited, in express terms, the granting of injunctions to stay proceedings in any Court of a State. Rev. St., Par. 720; Railway Co. v. Kuteman, supra. This prohibition of the statute extends to all cases over which the State Court first obtains jurisdiction, and applies not only to injunctions aimed at the State Court itself, but also to injunctions issued to parties before the Court, its officers or litigants therein. Diggs v. Wolcott, 4 Cranch 179; Peck v. Jenness, 7 How. 625; Dial v. Reynolds, 96 U. S. 340.

"As, in our opinion, the Circuit Court was without power to grant the injunction, and the decree must, for that reason, be reversed. * * *"

Mr. Foster, in his work on *Federal Practice, 5th Edition, Par. 270*, says:

"The Judicial Code, re-enacting a section of the Revised Statutes (Par. 720), provides that 'the writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' (Judicial Code, Par. 265.) This prohibition of the statute extends to all cases over which the State Court first obtains jurisdiction, and applies not only to injunctions aimed at the State Court itself, **but also to injunctions aimed at the parties before the Court, its officers or litigants**

> **therein.** (Citing Whitney v. Wilder, 5th U. S. Circuit Court of Appeals, 54 Fed., 554, 555, and Chicago Trust & Savings Bank v. Bentz, 59 Fed. 647.) Accordingly a Federal Court has refused to enjoin a railway company from taking possession of land upon the termination of condemnation proceedings in a State Court, to which the applicant for injunction was a party (Dillon v. Kansas City Ry. Co., 43 Fed. 109); the plaintiff in a foreclosure suit from selling property under a decree of the State Court therein, although the Federal complainant is not a party to such suit, and claims a lien upon such property, which is in the hands of a receiver appointed by such Court (Security Trust Co. v. Union Trust Co., 134 Fed. 381); and a town from selling property to pay an assessment the collection of which had been ordered by a State Court directing the laying out of a highway."

In *Maloney v. Mass. Loan Association, 53 Fed. 209*, was held:

> "Where a bill prays for an injunction or stay of proceedings in a State Court, and also other relief which would be useless without such an injunction, the whole bill would be dismissed on demurrer."

We are aware that the doctrine pertains in the Federal Court that the provision contained in the Judicial Code, Par. 1030, forbidding the Federal Courts to enjoin the prosecution of suits in State Courts, does not apply to proceedings incidental to jurisdiction properly acquired by a Federal Court for other purposes than that of enjoining proceedings in a State Court. For illustration, where a com-

plainant, after obtaining a decree in her favor, was proceeding before the master for an accounting of rents and profits, an injunction will lie to enjoin subsequent action brought by her in a State Court to recover the same rents and profits. This is to prevent conflicts and a multiplicity of suits. But what we desire to impress upon your Honors is that the present suit is not brought as an incident to the jurisdiction acquired by the United States Circuit Court of Appeals in the *Peake case*, but is brought solely to enjoin the carrying out of a decision of the Supreme Court of Louisiana, which decrees that the Leader Realty Company, Ltd., whose title was derived from a source different from the City of New Orleans, defendant in the *Peake case*. The purchaser in the *Peake case* only acquired such title as the defendant, the City of New Orleans, possessed. The title of the Leader Realty Co., derived from a different source than the City of New Orleans, being the better title, as held by the Supreme Court of Louisiana, surely the Land Company has no cause for complaint, nor has the District Court of the United States jurisdiction by way of injunction to prevent the judgment of the Supreme Court of Louisiana being executed and the rightful owner of the property placed in possession thereof. In the present case, if it is held the United States District Court has jurisdiction, it will, in effect, stop the carrying out of the order of the Supreme Court of the State of Louisiana, and this you have said, in *13 Wallace*, the Federal Courts were inhibited from doing under Paragraph 720 of the Revised Statutes, now Paragraph 1030 of the Judicial Code of the United States.

The parties and the subject matter of the present bill are identically the same as the subject matter and the parties in the suit of Leader Realty Company v. New Orleans Land Company and Lakeview Land Company, Nos. 91,799 and 91,-800 of the Civil District Court, Parish of Orleans. The issues in the suit having been finally determined by the Supreme Court of Louisiana adversely to the New Orleans Land Company, the United States District Court is without jurisdiction to review the judgment of the Supreme Court of Louisiana.

In *Forsyth v. Hammond, 166 U. S. 506*, it was held:

> "The plaintiff in error having voluntarily commenced an action in the Supreme Court of the State to establish her rights against the City of Hammond, and the questions at issue being judicial in nature and within the undoubted cognizance of the State Court, she cannot, after a decision by that Court, be heard in any other tribunal to collaterally deny its validity."

Therefore, we say, in the present case, that the New Orleans Land Company, complainant in the present bill, having filed its answer without any protest or objection in the State Court, setting up all the defenses which it is now urging in the present bill as to the validity of its title, and the Supreme Court having held that the Leader Realty Company's title to the land is the better title, it cannot now, after a decision by the Supreme Court of the State on all questions

involved, have that decision reviewed by the United States District Court.

In *Cooper v. Newell, 173 U. S. 555*, it was held that the Courts of the United States are bound to give the judgments of the State Court the same faith and credit that the Courts of one State are bound to give the judgments of the Courts of a sister State.

In *Scotland v. Hill, 132 U. S. 107; Forsyth v. Hammond, 166 U. S. 506, and Colon v. Webster Mfg. Co., 84 Fed. 593*, it was held that the judgment in a State Court having jurisdiction will operate as a bar to a second suit for the same cause of action between the same parties in a Federal Court.

In *Chicago v. Wiggins Brewing Co., 108 U. S. 22*, the Court said:

> "So long as the judgment (of a State Court) stands it cannot be impeached collaterally in the Courts of the United States any more than those of the State, by showing that if due effect had been given to the laws it would have been the other way."
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The Courts of the United States must give it the same effect.

The able attorneys for the Land Company in the District Court referred to *Julian v. Central Trust Company, 193 U.S. 94*, as justifying their applying to the District Court

for an injunction to arrest the orders of the Supreme Court of Louisiana. A reference to that decision and similar decisions will show the Circuit Court of the United States ordered a sale of a railroad, free of all privileges, mortgages or other encumbrances resting thereon, as it had the undoubted right and jurisdiction to do. The purchaser at the sale, therefore, acquired free of all claim against the defendant. Subsequent to the sale, a creditor of the defendant went into the State Court to assert a claim against the property sold, and it was held that the Circuit Court, having ordered the property sold free of all claims, and the purchaser having so acquired, that the Circuit Court of the United States, **in order to make its decree effectual,** had the right, notwithstanding Sec. 720 Rev. Stat., to restrain all proceedings in the State Court. The purchaser in the *Peake case* acquired whatever title the defendant, the City of New Orleans, and her authors in title possessed. If the City of New Orleans or her authors in title, or anyone holding under them, attempted in the State Court to interfere with the possession obtained by the purchaser in the *Peake case*, then the District Court of the United States, in order to make its decree effectual, could enjoin the proceedings. But in the present case neither the City of New Orleans nor its authors in title, or anynoe holding under them, are interfering with the possession of the purchaser in the *Peake case*. The Leader Realty Company, the holder of title derived from a source entirely different from the City of New Orleans, namely, from the State of Louisiana, brought an action against the New Orleans Land Company,

which was in possession of the land owned by it, to be decreed to be the owner thereof. The Land Company defended, asserting title it had acquired from the City of New Orleans in the Peake suit. The Supreme Court of Louisiana held the title of the Leader Realty Company to be the better of the two. The District Court is now asked to overrule the judgment of the Supreme Court of Louisiana and to maintain the validity of the title which the purchaser obtained from the Receiver in the *Peake case*. This, we respectfully submit, the District Court has no jurisdiction to do.

In *High on Receivers, 4th Ed., Sec. 199, p. 232*, is the following:

> "Nor is the title of a third person, not a party to the cause in which the receiver is appointed and the sale made, divested or affected by such sale."

The purchaser in the *Peake case* could only acquire whatever title the defendant, the City of New Orleans, possessed, and could not affect the title held by a third person, acquired from a different source. The Supreme Court of Louisiana having held that the title of the Leader Realty Company, Ltd., obtained from a source different from the City of New Orleans, was superior to the one acquired by the defendant in the receivership sale, the District Court has no jurisdiction to arrest the judgment of the Supreme Court of Louisiana by injunction, nor has that Court jurisdiction to review the judgment of the Supreme Court of

Louisiana to determine whether or not it was correct in holding the title of the Leader Realty Company to be superior to that of the New Orleans Land Company.

The question as to whether the Leader Realty Company, Ltd., or the New Orleans Land Company has the better title to a piece of real estate having been determined by the Supreme Court of Louisiana, after a full hearing of all parties, the judgment of the Supreme Court of Louisiana is final and the United States District Court for the Eastern District of Louisiana has no jurisdiction to review it. The proper remedy to review final judgment of the Supreme Court of Louisiana is by a writ of error or *certiorari* to this Honorable Court. The New Orleans Land Co. only applied to the District Court for relief after your Honors had dismissed his writ of error for want of jurisdiction (See *248 U. S. 550*).

We respectfully ask that the judgment of the lower Court be affirmed.

Respectfully submitted,

JOHNSTON ARMSTRONG,
WILLIAM WINANS WALL,
GUSTAVE LEMLE,
Attorneys for the Leader Realty Co.,
Defendant and Appellee.

# SUPREME COURT OF THE UNITED STATES.

No. 152.—October Term, 1920.

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| New Orleans Land Company, Appellant, *vs.* Leader Realty Company, Ltd. | Appeal from the District Court of the United States for the Eastern District of Louisiana. |

[February 28, 1921.]

Mr. Justice McReynolds delivered the opinion of the Court.

Having recovered a judgment upon certain drainage warrants issued under Act 30, 1871, James W. Peake of New York instituted a second suit in the United States Circuit Court, Eastern District of Louisiana—May 30, 1891—against New Orleans, seeking sale of land which that city held as trustee to secure all such warrants. See *Peake* v. *New Orleans* (1890) 139 U. S. 342. Neither the appellee nor any of its predecessors in interest was party to the proceeding. By direction of the court a duly appointed Receiver sold the land—January 15, 1892—to Dr. Gaudet, who shortly thereafter transferred it to appellant, a Louisiana corporation, which took immediate possession.

Setting up superior title to some of the land under patent from the State issued June 3, 1874, appellee, also a Louisiana corporation, brought suit against appellant in the State Court, December 8, 1909, and obtained a favorable judgment, afterwards affirmed by the Supreme Court. *Leader Realty Co.* v. *New Orleans Land Co.*, 142 La. 169. Thereupon, appellant began this proceeding to restrain enforcement of the judgment of the State Court, or interference with its possession, and alleged that the District Court's jurisdiction was invoked solely in aid of the decree for sale in *Peake* v. *New Orleans*. No diversity of citizenship existed, and deeming the bill not ancillary but original the court below dismissed it for want of jurisdiction.

"The rule is well settled that a sale of real estate under judicial proceedings concludes no one who is not in some form a party to

such proceedings." *Pittsburgh, &c., Ry.* v. *Loan & Trust Co.*, 172 U. S. 493, 515. Clearly, *Peake* v. *New Orleans* (1891) was not a proceeding *in rem* to which all persons having an interest in the land were deemed parties with the right to intervene. Its only purpose was to secure sale and transfer of such right and title as the city held. Rights of third parties were not subject to adjudication therein. High on Receivers, 4th Ed., Sec. 199a. The subsequent action by the State Court did not interfere with anything done by the Federal Court—*Dupasseur* v. *Rochereau*, 21 Wall. 130, 136, 137—and the relief now sought by appellant is not necessary to protect or render effectual any former decree. *Julian* v. *Central Trust Co.*, 193 U. S. 93, and similar cases are not pertinent. Their purpose was to protect or enforce some right theretofore duly adjudicated while here the defendant's claim in no way conflicts with any right arising under the former adjudication, and nothing is required in order to render that effectual.

The decree below is.

*Affirmed.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*